

Judiciary Appropriations Committee

Tuesday, April 4, 2006

4:00 p.m. or Upon Adjournment of the Fiscal Council
28 House Office Building



Florida House of Representatives

Fiscal Council Judiciary Appropriations Committee

Allan Bense Speaker Jeff Kottkamp Chair

Agenda for
Tuesday, April 4, 2006
4:00 p.m. or Upon Adjournment of the Fiscal Council
28 House Office Building

- I. Call to Order
- II. Roll Call
- III. HB 65 CS on Foreclosure Proceedings by Rep. Porth
- IV. HB 391 CS on Community Associations by Rep. Domino
- V. HB 637 on Consumer Protection by Rep. Seiler
- VI. HB 1099 CS on Court Actions Involving Families by Rep. Planas
- VII. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #:

HB 65 CS

Residential Foreclosure Proceedings

TIED BILLS:

SPONSOR(S): Porth; Kottkamp None

IDEN./SIM. BILLS: CS/SB 166

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	7 Y, 0 N, w/CS	Bond	Bond
2) Economic Development, Trade & Banking Committee	13 Y, 0 N, w/CS	Olmedillo	Carlson
3) Justice Appropriations Committee		Brazzell Hus	DeBeaugrine
4) Justice Council			
5)			

SUMMARY ANALYSIS

Foreclosure is the legal process for enforcing a lien or mortgage encumbering real property. The foreclosure process results in a forced sale of the property. In some foreclosure cases, the sale price exceeds the amount owed to pay off the lien or mortgage. In such cases, the former property owner may be entitled to proceeds from the sale. Current law does not provide a procedure for distribution of that surplus to the former property owner, requiring the former owner to file court papers to obtain a court order directing the clerk to pay the surplus to the former owner.

This bill seeks to address problems and abuses related to handling surpluses. It:

- Creates a legal presumption that the former owner of the property is entitled to the surplus after payment of subordinate lienholders who timely filed their claim. It requires the clerk of court to mail a copy of the final judgment rendered in a foreclosure proceeding to every party to the action, including parties in default. The final judgment must including notice of a potential surplus.
- Requires that certain disclosures be made before a court will honor a transfer or assignment of the surplus.
- Provides that it is deceptive and unfair trade practice to victimize a person whose home is in foreclosure, creating a civil cause of action.
- Creates a new class of entities to be known as "surplus trustees" and provides for their certification by the Florida Clerks of Court Operations Corporation.
- Creates service fees payable to the clerk of court and the surplus trustee related to foreclosure surpluses.

This bill appears to have a fiscal impact on state and local governments. See "Fiscal Comments", below.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives. h0065d.JA.doc STORAGE NAME:

DATE:

3/30/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government -- This bill provides additional procedures for foreclosure actions, and creates a new cause of action. It also provides for the regulation of surplus trustees and expands the duties of the Florida Clerks of Court Operations Corporation.

Ensure Lower Taxes -- This bill creates new fees.

Promote Personal Responsibility -- This bill increases personal responsibility for injurious behavior by creating a cause of action for deceptive and unfair trade practices.

B. EFFECT OF PROPOSED CHANGES:

Background

Foreclosure is the legal process for enforcement of a security interest in real property. Subject to the owner's right to redemption¹, property subject to foreclosure is sold and the proceeds of the sale are applied against the debt. In most foreclosures, the debt exceeds the net proceeds of the sale.² However, due to recent economic forces that have led to substantial inflation in real property values, a growing number of properties are being sold at foreclosure for more than the debt owed on the property. The proceeds of a sale in excess of the debt owed is referred to as the surplus from the sale. In general, the property owner is entitled to the surplus.

A property owner facing foreclosure can seek help from numerous sources. The property owner can negotiate with the foreclosing lender. A different lender may be willing to refinance the property, or offer a second mortgage. The property owner can seek bankruptcy protection. The property owner can sell the property prior to the foreclosure sale. The property owner can borrow from friends and family. Most foreclosure cases are resolved by agreement or redemption of the property.

It has been reported that, with the growing number of foreclosures that may result in a surplus, there is a growing number of entrepreneurs who are offering services to property owners subject to foreclosure. Some of these entrepreneurs are receiving significant profits while the property owners they contract with receive little of their equity in the property. Some of the common means are:

- A lawyer, or a person claiming to be a lawyer, will offer to file the legal papers required to obtain the court order required for the clerk to distribute the surplus to the now (or soon to be) former property owner. The fee arrangement may be a contingency fee. The property owner does not realize that the paperwork is basic enough that most lay persons could easily complete it.³
- The entrepreneur offers the property owner a small sum of cash in exchange for an assignment of the surplus.

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¹ Redemption is the right of any property owner to pay the debt at any time prior to the sale, and thereby stop the sale and keep the property. See generally s. 45.0315, F.S.

² Where the debt exceeds the sale proceeds, the lender can usually sue for the difference, known as a deficiency. See generally s. 702.06, F.S.

In a related scheme, the Florida Bar has suspended the license of an attorney who was allegedly filing the paperwork necessary to obtain the surplus funds, but without receiving the owner's authority. The lawyer would deduct a 40% fee from the proceeds, and prepare a check payable to the former owner for the remainder. In some cases, the partners would intercept and cash the owner's check. Daily Business Review, South Florida lawyer accused in mortgage scam is suspended, Vol. 46, No. 45 (Feb. 11, 2005).

• The entrepreneur offers the property owner a small sum of cash for a quitclaim deed to the property, thereby obtaining the legal right to the surplus.

The procedure for judicial foreclosure sales is set forth in s. 45.031, F.S. The section does not specify how the clerk is to handle a surplus, thus requiring a court order for distribution of the surplus. The section also does not restrict any sale or transfer of the real property, or the right to the surplus, prior to foreclosure.

Effect of Bill

The bill attempts to address problems and abuses in the handling of surpluses from foreclosures.

Disbursement of Surplus Funds

This bill creates s. 45.032, F.S., to provide for disbursement of surplus funds after a judicial foreclosure sale. The bill creates a rebuttable legal presumption that the owner of the property that was foreclosed, as of the date of the filing of the lis pendens, is entitled to the surplus funds unless some other person proves entitlement to the funds. The bill provides a method to rebut the presumption. In addition, the bill specifically states that the legislature intends to abrogate the common law rule that surplus proceeds in a foreclosure case are the property of the owner on the date of the foreclosure sale.

The bill requires the clerk to furnish a copy of the final judgment to every party in the action or to their attorney of record. The final judgment shall provide certain language including a notice of potential surplus, a statement indicating that a subordinate lienholder must file a claim for surplus funds no later than 60 days after the sale, a statement indicating that the property owner does not need to assign his or her rights in the property to claim surplus funds, and a statement indicating that the owner does not need any type of representation to claim such funds.

The bill requires that the publication of sale, which includes the time and place of the sale, now include language stating that any person claiming an interest in the surplus fund must file such claim within 60 days of the date of the sale. The sale of the foreclosed property must be conducted at the time and place indicated in the final judgment.

The clerk continues to be responsible to serve a copy of the Certificate of Sale and Certificate of Title on each party to the action; however, the clerk must now also serve parties in default and include the dollar amount of the sale. The disbursement and available surplus amounts now must be included in the Certificate of Disbursement. In addition, the Certificate of Disbursement must state that any person, other than the rightful owner, must file a claim to surplus funds within 60 days after the sale for such claim to be valid.

The clerk shall hold the surplus funds 60 days after issuance of the Certificate of Disbursement, pending a court order. In the event no one files a claim within 60 days, the clerk shall contact the Florida Clerks of Court Operations Corporation (CCOC) for appointment of a "surplus trustee," who shall do so within 10 days. Upon such assignment, the clerk shall furnish the surplus trustee a copy of a Notice of Appointment of Surplus Trustee, which must include the amount of the available surplus.

The bill allows the surplus trustee one year from the date of appointment to locate the property owner. If after such time the surplus trustee fails to locate the property owner, the clerk shall terminate the appointment and shall treat the remaining surplus funds as unclaimed property to be deposited with the Chief Financial Officer 30 days after such termination.

Any person other than the owner of record who claims the surplus funds has the burden of proving that he or she is entitled to some or all of the surplus funds. The court must consider the factors in s. 45.033, F.S., created by this bill, when hearing a claim that a person other than the owner of record is entitled to the surplus funds.

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Transfer or Assignment of Right to Surplus Funds

This bill creates s. 45.033, F.S., to provide criteria for determining whether a sale or assignment of the right to surplus proceeds in a property subject to foreclosure is a valid sale or assignment. The bill creates a rebuttable presumption that the owner of real property as of the date of the filing of a lis pendens is entitled to surplus funds available in a foreclosure of that real property after payment of subordinate lienholders who have timely filed a claim. Another person may rebut that presumption only by proving that:

- The grantee or assignee is a grantee or assignee by virtue of an involuntary transfer or assignment of the right to collect the surplus. An involuntary transfer or assignment may be as a result of inheritance or as a result of the appointment of a guardian.
- A voluntary transfer or assignment shall be a transfer or assignment qualified under this subsection if:
 - o The transfer or assignment is in writing, and the instrument:
 - Was executed prior to the foreclosure sale and includes a financial disclosure that specifies the assessed value of the property, a statement that the assessed value may be lower than the actual value of the property, the approximate amount of any debt encumbering the property, and the approximate amount of any equity in the property. If the instrument was executed after the foreclosure sale, the instrument must also specify the foreclosure sale price and the amount of the surplus.
 - Includes a statement that the owner does not need an attorney or other representative to recover surplus funds in a foreclosure.
 - Specifies all forms of consideration paid for the rights to the property or the assignment of the rights to any surplus funds.
 - o The transfer or assignment is filed with the court on or before 60 days after the filing of the Certificate of Disbursements.
 - o There are funds available to pay the transfer or assignment after payment of timely filed claims of subordinate lienholders.
 - The transferor or assignee is qualified as a surplus trustee, or could qualify as a surplus trustee, pursuant to s. 45.034, F.S.

A transfer or assignment that does not follow these requirements may nevertheless be allowed by the court if the court finds that the instrument was procured in good faith and with no intent to defraud the former owner.

A person who has executed a transfer or assignment that does not conform to the requirements of this section has the right to petition the court presiding over the foreclosure proceeding to set aside the nonconforming transfer or assignment. If the transfer or assignment is set aside, the owner of record will be entitled to the surplus funds after payment of timely filed claims by subordinate lienholders; but the other party may, in a separate proceeding, seek rescission of contract and appropriate damages therein.

The provisions regarding the requirements of an assignment or transfer of the right to collect surplus funds do not apply to a deed, a mortgage, or a deed in lieu of foreclosure, unless a person other than the owner of record is claiming that a deed or mortgage entitles the person to surplus proceeds. Nothing in this section shall affect the title or marketability of the real property that is the subject of the deed or other instrument. The provisions regarding the requirements of an assignment or transfer of the right to collect surplus funds do not affect the validity of a lien evidenced by a mortgage.

Surplus Trustee

The bill authorizes a surplus trustee to locate the owner of surplus funds under certain circumstances. The surplus trustee must apply for certification with Florida Clerks of Court Operations Corporation

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(CCOC). Subsequently, the CCOC must certify an applicant that qualifies under the requirements of s. 45.034, F.S., for one calendar year.

The primary duty of a surplus trustee is to locate the owner of record within one year of appointment. An application for certification must include the following:

- The name and address of the entity and one or more of its principals;
- A certificate of good standing from the Florida Secretary of State indicating that the entity is a Florida entity;
- A statement under oath by a principal certifying that the entity, or a principal of the entity, has a minimum of 12 months experience in the recovery of surplus funds in foreclosure actions;
- Proof that the entity holds a valid Class "A" private investigators license;
- Proof that the entity carries a minimum of \$500,000 in liability insurance, cash reserves or bonding;
- A statement from an attorney licensed to practice in Florida certifying that the attorney is a
 principal of the entity or is employed by the entity on a full-time basis, and that the attorney will
 supervise the management of the entity;
- A statement under oath by a principal that he or she understands his or her duty to immediately
 notify the CCOC of the entity's failure to continue to qualify under the relevant statute; and
- A non-refundable fee of \$25.

A surplus trustee may renew its qualification by providing the CCOC a \$25 renewal fee and a statement under oath as to its continued qualification under s. 45.035, F.S.

The CCOC shall develop a rotation system for appointment of surplus trustees.

The bill authorizes the surplus trustee to collect service fees, payable from surplus funds, related to its duties.

Deceptive and Unfair Trade Practices Related to Surplus Funds

This bill creates s. 501.2078, F.S., within the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).⁴ The FDUTPA creates a number of civil causes of action by which a state attorney, or the Attorney General, may seek injunctive relief, an injunction, and a civil penalty against a person engaging in a deceptive or unfair trade practice. The FDUPTA also creates a civil cause of action by which a person harmed by a deceptive or unfair trade practice may seek a civil judgment against a person engaging in a deceptive and unfair trade practice.⁵

This bill provides that deceptive and unfair trade practices occurring in a foreclosure proceeding of a homeowner may give rise to a civil cause of action under the FDUPTA. The bill also defines "homeowner". The foreclosure must be a "residential foreclosure proceeding", defined as "any action in a circuit court of this state in which a party seeks to foreclose on a mortgage encumbering the mortgagor's primary dwelling."

This bill provides that any person, other than a financial institution as defined by s. 655.005, F.S., who willfully uses, or has willfully used, a method, act, or practice in violation of FDUPTA, which method, act, or practice victimizes or attempts to victimize homeowners during the course of a residential foreclosure proceeding, and in committing such violation knew or should have known that such conduct was unfair or deceptive, is liable for a civil penalty of not more than \$15,000 for each such violation.

STORAGE NAME: DATE:

⁴ See Part II of ch. 501, F.S.

⁵ Section 501.211, F.S.

⁶ Section 655.005(1)(h), F.S., defines "financial institution" as "a state or federal association, bank, savings bank, trust company, international bank agency, international branch, representative office or international administrative office, or credit union."

Restitution or reimbursement to a homeowner is to be paid first, before payment of any civil penalty. Civil penalties collected are deposited into the Legal Affairs Revolving Trust Fund of the Department of Legal Affairs and allocated solely to the Department of Legal Affairs for "the purpose of preparing and distributing consumer education materials, programs, and seminars to benefit homeowners in residential foreclosure proceedings or to further enforcement efforts."

This bill provides that the following do not constitute grounds for suit under this section of the FDUPTA:

- The act of encumbering the dwelling subject to a residential foreclosure proceeding with a substitute or additional lien.
- A deed in lieu of foreclosure, a workout agreement, a bankruptcy plan, or any other agreement between a foreclosing lender and a homeowner.
- Any action taken by a lender, mortgage broker, assignee of a mortgage, or counsel for any such entity, in foreclosing a mortgage or collecting on the note.

Legal Notice Concerning Foreclosure Proceedings

The prevailing party in any civil action may be entitled to reimbursement of court costs from a non-prevailing party. This bill limits an award of costs for a legal advertisement, publication, or notice relating to a foreclosure proceeding to the actual costs charged by the newspaper for the advertisement, publication or notice.

Fees

This bill authorizes the clerk to take the following deductions from surplus funds:

- A service charge of up to \$60 for making, recording and certifying the sale and title.
- A \$25 fee to be used for the purposes of educating the public regarding foreclosure proceedings.
- A \$10 fee to notify surplus trustees of surplus funds.
- A \$10 fee for each disbursement of surplus.
- A \$10 fee to contact the Florida Clerks of Court Operations for assignment of a case to a surplus trustee.
- A \$10 fee to furnish surplus trustee a copy of a final judgment.
- A \$10 fee to furnish the surplus trustee with a certificate of disbursement.
- A \$10 fee to disburse surplus trustees their costs in advance.

Moreover, the bill provides that a surplus trustee is entitled to a 2% service fee upon notice of appointment and a 10% service charge upon obtaining the order disbursing surplus funds to the owner, which costs are related to the proper payment of the surplus funds.

C. SECTION DIRECTORY:

Section 1 amends s. 45.031, F.S., relating to notice of surplus funds.

Section 2 creates s. 45.032, F.S., providing for distribution of surplus funds.

Section 3 creates s. 45.033, F.S., providing criteria for determination of a valid transfer or assignment of the right to collect surplus funds.

Section 4 creates s. 45.034, F.S., providing qualification and appointment criteria for surplus trustees.

Section 5 creates s. 45.035, F.S., providing for clerks' fees.

Section 6 creates s. 501.2078, F.S., to provide that victimization of a homeowner involved in a foreclosure action may be a violation of the Florida Deceptive and Unfair Trade Practices Act.

Section 7 amends s. 702.035, F.S., to limit taxable costs chargeable in a foreclosure action.

STORAGE NAME: DATE: Section 8 amends s. 201.02, F.S., to correct a cross-reference.

Section 8 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

Revenues:

It is unknown whether the fees provided in the bill will be sufficient to cover the costs of the increased clerk responsibilities. If they are insufficient, clerks of court may require additional funding and thus may be eligible for the Legislative Budget Commission to approve increases to their maximum annual budgets pursuant to s. 28.36, F.S. Any such increases may reduce the contribution to General Revenue made by clerks with surplus revenues. However, to the degree that clerk workload and related costs do not increase, at least a portion of the additional revenues would be eventually deposited into the General Revenue Fund.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The clerks of court would collect additional revenue; however, since this revenue is court-related, a portion of it ultimately accrues to the state.

2. Expenditures:

To the degree that a clerk of court's overall workload would increase because of the duties required under this bill, local governments would be impacted.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certain individuals who are due funds from the surplus remaining after a foreclosure and who would not otherwise claim these funds on their own may be more likely to actually receive those funds given the processes and protections provided by the bill. However, the individual would bear the costs of these processes and protections by being charged fees from the surplus. Fees due to the clerk of court could range up to \$85 and fees due to the surplus trustees would be 12% of the surplus. Individuals who claimed surplus funds after the sale but prior to the appointment of a surplus trustee would be liable only for the \$25 fee for educating the public regarding foreclosure proceedings.

A new class of entities known as "surplus trustees" would be eligible, upon certification by the Florida Clerks of Court Operations Corporation, for appointment on a rotating basis to locate individuals due surpluses. Upon appointment, a surplus trustee would receive 2% of the surplus and upon locating the individual would receive 10% of the surplus.

The Florida Clerks of Court Operations Corporation would receive \$25 per entity seeking or renewing certification as a surplus trustee. The bill does not specify the action to be taken if this revenue is insufficient to cover the corporation's costs for performing this function.

D. FISCAL COMMENTS:

STORAGE NAME: DATE: h0065d.JA.doc 3/30/2006 During FY 2004-05, there were 59,907 real property and mortgage foreclosures in Florida. The percentage of these foreclosures which were residential, sold by the clerk, and had surplus funds which remained unclaimed by the former homeowner and thus were subject to the fees and charges as provided in this bill is unknown.

This bill authorizes the clerk to take the following deductions from surplus funds:

- A \$25 fee to be used for the purposes of educating the public regarding foreclosure proceedings.
- A \$10 fee to notify surplus trustees of surplus funds.
- A \$10 fee for each disbursement of surplus.
- A \$10 fee to contact the Florida Clerks of Court Operations for assignment of a case to a surplus trustee.
- A \$10 fee to furnish the surplus trustee a copy of a final judgment.
- A \$10 fee to furnish the surplus trustee with a certificate of disbursement.
- A \$10 fee to disburse surplus trustees their cost in advance.

Moreover, the bill provides that a surplus trustee is entitled to a 2% service fee upon notice of appointment and a 10% service charge upon obtaining the order disbursing surplus funds to the owner, which costs are related to the proper payment of the surplus funds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 11, 2006, the Civil Justice Committee adopted one "remove everything after the enactment clause" amendment. The amendment:

- Removed the notification that was to be attached to every summons served in a foreclosure action.
- Removed the prohibition on contacting persons subject to foreclosure.
- Created a presumption that the owner of record as of the date of the lis pendens is the person entitled to payment of the surplus, unless another person proves his or her right to claim the surplus.
- Created fees for the clerk of court.
- Provided that the clerk can distribute the surplus to the former owner if no other person objects.
- Removed limitations on property transfers that would likely have impacted all real estate closings.

⁷ FY 2004-05 Statistical Reference Guide, Office of the State Courts Administrator, p. 3-2. STORAGE NAME:

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The bill was then reported favorably with a committee substitute.

On March 23, 2006, the Economic Development Trade and Banking Committee adopted a "remove everything after the enactment clause" amendment. This amendment:

- Requires the final judgment rendered in a foreclosure proceeding to include information regarding notice of potential surplus, place and time of sale, and claim filing deadlines.
- Requires the clerk to mail a copy of the final judgment to every party or attorney of record in the action.
- Requires that a statement be placed in a publication of sale indicating that a person must file a claim for surplus funds within 60 days after the clerk issues the Certificate of Title.
- Requires that the certificate of sale include the purchase price.
- Requires certain information in a certificate of disbursement, including filing deadlines, disbursement and surplus amounts.
- Creates a rebuttable presumption that the owner is the owner of the property as of the time a lispendens is filed and provides a method to rebut the presumption.
- Requires certain disclosures for a voluntary transfer or assignment of rights to be valid.
- Specifies that the legislature abrogates the common law rule that surplus proceeds in a foreclosure case are the property of the owner on the date of the foreclosure sale.
- Requires the clerk to hold the surplus funds for 60 days after issuing the certificate of disbursement, pending a court order.
- Provides that the court shall set an evidentiary hearing to determine entitlement to surplus if claims were filed.
- Removes the requirement that the clerk provide notice to certain persons regarding availability of surplus funds.
- Amends the procedure by which the clerk should locate the property owner when a surplus remains, and it provides that after 60 days, the clerk must appoint a surplus trustee to locate the owner.
- Creates qualifications and appointment procedures for surplus trustees in foreclosure actions, including the requirement that a trustee apply for certification with the Florida Clerk of Court Operations Corporation.
- It provides that a trustee has one year to locate the property owner. Thereafter, the clerk shall terminate the appointment and after 30 days of such termination, surplus funds shall be treated as unclaimed property to be deposited with the Chief Financial Officer.
- Specifies that proceedings regarding surplus funds do not affect or cloud title to the property.
- Provides that trustee may employ subcontractors who are not qualified as surplus trustees.
- Authorizes the clerk to take the following deductions from surplus funds:
 - A service charge of up to \$60 for making, recording and certifying the sale and title.
 - A \$25 fee to be used for the purposes of educating the public regarding foreclosure proceedings.
 - A \$10 fee to notify surplus trustees of surplus funds.
 - A \$10 fee for each disbursement of surplus.
 - A \$10 fee to contact the Florida Clerks of Court Operations for assignment of a case to a surplus trustee.
 - A \$10 fee to furnish surplus trustee a copy of a final judgment.
 - A \$10 fee to furnish the surplus trustee with a certificate of disbursement.
 - A \$10 fee to disburse trustees their cost in advance.

Moreover, the bill provides that a surplus trustee is entitled to a 2% service fee upon notice of appointment and a 10% service charge upon obtaining the order disbursing surplus funds to the owner, which costs are related to the proper payment of the surplus funds.

STORAGE NAME: DATE:

CHAMBER ACTION

The Economic Development, Trade & Banking Committee recommends the following:

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Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to foreclosure proceedings; amending s. 45.031, F.S.; revising procedures and requirements for judicial sales; creating s. 45.032, F.S.; providing for disbursement of surplus funds after a judicial sale; providing definitions; establishing a rebuttable presumption of entitlement to surplus funds in certain filings; providing legislative intent; providing requirements and procedures for disbursement of surplus funds by the clerk of court; providing for appointment of a surplus trustee under certain circumstances; providing for notice of appointment; providing for termination of appointment; providing for treatment of surplus funds as unclaimed property under certain circumstances; providing construction relating to title of property in a foreclosure sale; creating s. 45.033, F.S.; providing for a sale or assignment of rights to surplus funds in a property subject to foreclosure; establishing a rebuttable Page 1 of 25

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presumption of entitlement to surplus funds; providing requirements for proof; providing legislative intent; providing requirements for rebutting the presumption; providing requirements for transfers or assignments of surplus funds; providing duties and authority of a court in payment of surplus funds under a transfer or assignment; providing for nonapplication to certain instruments; specifying absence of effect on title or marketability of certain property or validity of certain liens; creating s. 45.034, F.S.; providing qualifications for appointment as a surplus trustee by the Florida Clerks of Court Operations Corporation; providing requirements for appointment as a surplus trustee; providing for application and renewal fees; providing duties of the corporation in certifying surplus trustees; requiring the corporation to establish a rotation system for assignment of cases to surplus trustees; providing duties of a surplus trustee; providing entitlement of a surplus trustee to certain service charges and fees; creating s. 45.035, F.S.; specifying service charges for clerks of court for administering judicial sales and surplus funds; creating s. 501.2078, F.S.; providing definitions; providing a civil penalty for knowingly using unfair or deceptive homeowner victimization methods, acts, or practices in residential foreclosure proceedings; specifying higher priority of an order of restitution or reimbursement over imposition of a civil penalty; providing for deposit of civil penalties into the Legal Page 2 of 25

Affairs Revolving Trust Fund of the Department of Legal Affairs; allocating such funds for certain purposes; specifying nonapplication to certain encumbrances, deeds, or actions; amending s. 702.035, F.S.; limiting certain costs chargeable in a foreclosure proceeding; amending s. 201.02, F.S.; correcting a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 45.031, Florida Statutes, is amended to read:

45.031 Judicial sales procedure.--In any sale of real or personal property under an order or judgment, the procedures provided in ss. 45.031-45.035 following procedure may be followed as an alternative to any other sale procedure if so ordered by the court.÷

judgment, the court shall direct the clerk to sell the property at public sale on a specified day that shall be not less than 20 days or more than 35 days after the date thereof, on terms and conditions specified in the order or judgment. A sale may be held more than 35 days after the date of final judgment or order if the plaintiff or plaintiff's attorney consents to such time. The final judgment shall contain the following statement in conspicuous type:

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE Page 3 of 25

ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE 80 ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS 81 FINAL JUDGMENT. 82 83 IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS 84 REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK 85 NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A 86 CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS. 87 88 IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS 89 YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER 90 REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO 91 ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE 92 ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, [INSERT 93 INFORMATION FOR APPLICABLE COURT] WITHIN TEN (10) DAYS AFTER THE 94 SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE 95 SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT. 96 97 IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU 98 CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL 99 PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN 100 ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, 101 TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT 102 YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR 103 PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO 104 PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR NEAREST LEGAL 105 AID OFFICE AND TELEPHONE PHONE NUMBER) TO SEE IF YOU QUALIFY 106 FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY 107

CODING: Words stricken are deletions; words underlined are additions.

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MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR

SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT (NAME OF LOCAL

OR NEAREST LEGAL AID OFFICE) FOR ASSISTANCE, YOU SHOULD DO SO AS

SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

A copy of the final judgment shall be furnished by the clerk by

A copy of the final judgment shall be furnished by the clerk by first class mail to the last known address of every party to the action or to the attorney of record for such party. Any irregularity in such mailing, including the failure to include this statement in any final judgment or order, shall not affect the validity or finality of the final judgment or order or any sale held pursuant to the final judgment or order. Any sale held more than 35 days after the final judgment or order shall not affect the validity or finality of the final judgment or order or order or any sale held pursuant to such judgment or order thereto.

- (2) PUBLICATION OF SALE.--Notice of sale shall be published once a week for 2 consecutive weeks in a newspaper of general circulation, as defined in chapter 50, published in the county where the sale is to be held. The second publication shall be at least 5 days before the sale. The notice shall contain:
 - (a) A description of the property to be sold.
 - (b) The time and place of sale.

- (c) A statement that the sale will be made pursuant to the order or final judgment.
 - (d) The caption of the action.
 - (e) The name of the clerk making the sale.

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(f) A statement that any person claiming an interest in the surplus from the sale, if any, other than the property owner as of the date of the lis pendens must file a claim within 60 days after the sale.

The clerk shall receive a service charge of up to \$60 for services in making, recording, and certifying the sale and title that shall be assessed as costs. The court, in its discretion, may enlarge the time of the sale. Notice of the changed time of sale shall be published as provided herein.

(3) (2) CONDUCT OF SALE; DEPOSIT REQUIRED. -- The sale shall be conducted at public auction at the time and place set forth in the final judgment. The clerk shall receive the service charge imposed in s. 45.035 for services in making, recording, and certifying the sale and title that shall be assessed as costs. At the time of the sale, the successful high bidder shall post with the clerk a deposit equal to 5 percent of the final bid. The deposit shall be applied to the sale price at the time of payment. If final payment is not made within the prescribed period, the clerk shall readvertise the sale as provided in this section and pay all costs of the sale from the deposit. Any remaining funds shall be applied toward the judgment.

(4) (3) CERTIFICATION OF SALE.--After a sale of the property the clerk shall promptly file a certificate of sale and serve a copy of it on each party not in default in substantially the following form:

(Caption of Action)

Page 6 of 25

163 CERTIFICATE OF SALE 164 165 The undersigned clerk of the court certifies that notice of 166 public sale of the property described in the order or final 167 judgment was published in _____, a newspaper circulated in _____ 168 County, Florida, in the manner shown by the proof of publication 169 attached, and on ____, (year) , the property was offered for 170 public sale to the highest and best bidder for cash. The highest 171 and best bid received for the property in the amount of \$_ 172 was submitted by _____, to whom the property was sold. The 173 proceeds of the sale are retained for distribution in accordance 174 with the order or final judgment or law. WITNESS my hand and the 175 seal of this court on _____, (year) . 176 (Clerk) 177 (Deputy Clerk) 178 By (5) (4) CERTIFICATE OF TITLE. -- If no objections to the sale 179 are filed within 10 days after filing the certificate of sale, 180 the clerk shall file a certificate of title and serve a copy of 181 it on each party not in default in substantially the following 182 183 form: 184 (Caption of Action) 185 186 CERTIFICATE OF TITLE 187 188 The undersigned clerk of the court certifies that he or she 189 executed and filed a certificate of sale in this action on 190 Page 7 of 25

191 _____, (year) , for the property described herein and that no 192 objections to the sale have been filed within the time allowed 193 for filing objections.

The following property in ____ County, Florida:

195 (description)

196 was sold to .

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198 WITNESS my hand and the seal of the court on _____, (year)
199 (Clerk)

200 By (Deputy Clerk)

- (6)(5) CONFIRMATION; RECORDING. -- When the certificate of title is filed the sale shall stand confirmed, and title to the property shall pass to the purchaser named in the certificate without the necessity of any further proceedings or instruments.
- (6) RECORDING.—The certificate of title shall be recorded by the clerk.
 - (7) DISBURSEMENTS OF PROCEEDS. --
- (a) On filing a certificate of title, the clerk shall disburse the proceeds of the sale in accordance with the order or final judgment and shall file a report of such disbursements and serve a copy of it on each party not in default, and on the Department of Revenue if the department was named as a defendant in the action or if the Agency for Workforce Innovation or the former Department of Labor and Employment Security was named as a defendant while the Department of Revenue was providing unemployment tax collection services under contract with the Agency for Workforce Innovation through an interagency agreement pursuant to s. 443.1316.

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2006 HB 65 CS CS The certificate of disbursements shall be, in 219 substantially the following form: 220 221 (Caption of Action) 222 223 CERTIFICATE OF DISBURSEMENTS 224 225 The undersigned clerk of the court certifies that he or she 226 disbursed the proceeds received from the sale of the property as 227 provided in the order or final judgment to the persons and in 228 the amounts as follows: 229 Amount 230 Name 231 Total disbursements: \$ 232 Surplus retained by clerk, if any: \$ 233 234 IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS REMAINING AFTER 235 THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 236 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT 237 BE ENTITLED TO ANY REMAINING FUNDS. AFTER 60 DAYS, ONLY THE 238 OWNER OF RECORD AS OF THE DATE OF THE LIS PENDENS MAY CLAIM THE 239 SURPLUS. 240 241 WITNESS my hand and the seal of the court on _____, (year) 242 (Clerk) 243 Bv (Deputy Clerk) 244 245

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(c) If no objections to the report are served within 10 days after it is filed, the disbursements by the clerk shall stand approved as reported. If timely objections to the report are served, they shall be heard by the court. Service of objections to the report does not affect or cloud the title of the purchaser of the property in any manner.

- (d) If there are funds remaining after payment of all disbursements required by the final judgment of foreclosure and shown on the certificate of disbursements, the surplus shall be distributed as provided ss. 45.031-45.035.
- (8) VALUE OF PROPERTY.--The amount of the bid for the property at the sale shall be conclusively presumed to be sufficient consideration for the sale. Any party may serve an objection to the amount of the bid within 10 days after the clerk files the certificate of sale. If timely objections to the bid are served, the objections shall be heard by the court. Service of objections to the amount of the bid does not affect or cloud the title of the purchaser in any manner. If the case is one in which a deficiency judgment may be sought and application is made for a deficiency, the amount bid at the sale may be considered by the court as one of the factors in determining a deficiency under the usual equitable principles.
- (9) EXECUTION SALES.--This section shall not apply to property sold under executions.
- Section 2. Section 45.032, Florida Statutes, is created to read:
- 272 45.032 Disbursement of surplus funds after judicial 273 sale.--

Page 10 of 25

(1) For purposes of ss. 45.031-45.035, the term:

- (a) "Owner of record" means the person or persons who appear to be the owner of the property that is the subject of the foreclosure proceeding on the date of the filing of the list pendens. In determining an owner of record, a person need not perform a title search and examination but may rely on the plaintiff's allegation of ownership in the complaint when determining the owner of record.
- (b) "Subordinate lienholder" means the holder of a subordinate lien shown on the face of the pleadings as an encumbrance on the property. A lien being foreclosed on is not a subordinate lien. A subordinate lienholder includes, but is not limited to, a subordinate mortgage, judgment, assessment lien, or construction lien. However, the holder of a subordinate lien shall not be deemed a subordinate lienholder if the holder was paid in full from the proceeds of the sale.
- (c) "Surplus funds" or "surplus" means the funds remaining after payment of all disbursements required by the final judgment of foreclosure and shown on the certificate of disbursements.
- (d) "Surplus trustee" means a person qualifying as a surplus trustee pursuant to s. 45.034.
- (2) There is established a rebuttable legal presumption that the owner of record on the date of the filing of a lis pendens is the person entitled to surplus funds after payment of subordinate lienholders who have timely filed a claim. A person claiming a legal right to the surplus as an assignee of the rights of the owner of record must prove to the court that such

Page 11 of 25

302	person is entitled to the funds. At any hearing regarding such
303	entitlement, the court shall consider the factors set forth in
304	s. 45.033 in determining whether an assignment is sufficient to
305	overcome the presumption. It is the intent of the Legislature to
306	abrogate the common law rule that surplus proceeds in a
307	foreclosure case are the property of the owner of the property
308	on the date of the foreclosure sale.
309	(3) During the 60 days after the clerk issues a
310	certificate of disbursements, the clerk shall hold the surplus
311	pending a court order.
312	(a) If the owner of record claims the surplus during the
313	60-day period and there is no subordinate lienholder, the court
314	shall order the clerk to deduct any applicable service charges
315	from the surplus and pay the remainder to the owner of record.
316	The clerk may establish a reasonable requirement that the owner
317	of record prove his or her identity before receiving the
318	disbursement. The clerk may assist an owner of record in making
319	a claim. An owner of record may use the following form in making
320	a claim:
321	
322	(Caption of Action)
323	
324	OWNER'S CLAIM FOR MORTGAGE FORECLOSURE SURPLUS
325	
326	State of
327	County of
328	Under penalty of perjury, I (we) hereby certify that:
329	1. I was (we were) the owner of the following described
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CODING: Words $\underline{\text{stricken}}$ are deletions; words $\underline{\text{underlined}}$ are additions.

2006 HB 65 CS CS real property in _____ County, Florida, prior to the foreclosure 330 sale and as of the date of the filing of the lis pendens: 331 332 (Legal description of real property) 333 334 2. I (we) do not owe any money on any mortgage on the 335 property that was foreclosed other than the one that was paid 336 337 off by the foreclosure. 3. I (we) do not owe any money that is the subject of an 338 unpaid judgment, condominium lien, cooperative lien, or 339 homeowners' association. 340 4. I am (we are) not currently in bankruptcy. 341 5. I (we) have not sold or assigned my (our) right to the 342 mortgage surplus. 343 6. My (our) new address is: . 344 7. If there is more than one owner entitled to the 345 surplus, we have agreed that the surplus should be paid 346 jointly, or to: , at the following address: 347 I (WE) UNDERSTAND THAT I (WE) AM (ARE) NOT REQUIRED TO 348 HAVE A LAWYER OR ANY OTHER REPRESENTATION AND I (WE) DO NOT HAVE 349 TO ASSIGN MY (OUR) RIGHTS TO ANYONE ELSE IN ORDER TO CLAIM ANY 350 MONEY TO WHICH I (WE) MAY BE ENTITLED. 351 9. I (WE) UNDERSTAND THAT THIS STATEMENT IS GIVEN UNDER 352 OATH, AND IF ANY STATEMENTS ARE UNTRUE THAT I (WE) MAY BE 353 PROSECUTED CRIMINALLY FOR PERJURY. 354 355 356 (Signatures)

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Sworn to (or affirmed) and subscribed before me this 358 (name of person making statement) (year) , by 359 day of 360 (Signature of Notary Public - State of Florida) 361 (Print, Type, or Stamp Commissioned Name of Notary Public) 362 363 Personally Known OR Produced Identification 364 365 Type of Identification Produced 366 367 If any person other than the owner of record claims an 368 interest in the proceeds during the 60-day period or if the 369 owner of record files a claim for the surplus but acknowledges 370 that one or more other persons may be entitled to part or all of 371 the surplus, the court shall set an evidentiary hearing to 372 determine entitlement to the surplus. At the evidentiary 373 hearing, a grantee or assignee has the burden of proving that he 374 or she is entitled to some or all of the surplus funds. The 375 court may grant summary judgment to a subordinate lienholder 376 prior to or at the evidentiary hearing. The court shall consider 377 the factors in s. 45.033 when hearing a claim that any person 378 other than a subordinate lienholder or the owner of record is 379 entitled to the surplus funds. 380 If no claim is filed during the 60-day period, the 381 clerk shall contact the Florida Clerks of Court Operations 382 Corporation, established by s. 28.35, for appointment of a 383 surplus trustee. The corporation shall make an appointment 384 within 10 days. Upon assignment, the clerk shall prepare a 385

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2006 HB 65 CS CS 386 notice of appointment of surplus trustee and shall furnish a copy to the surplus trustee. The form of the notice may be as 387 388 follows: 389 390 (Caption of Action) 391 NOTICE OF APPOINTMENT OF SURPLUS TRUSTEE 392 393 The undersigned clerk of the court certifies that he or she 394 disbursed the proceeds received from the sale of the property as 395 provided in the order or final judgment to the persons named in 396 397 the certificate of disbursements, and that surplus funds of remain and are subject to disbursement to the owner 398 399 of record. You have been appointed as surplus trustee for the purpose of finding the owner of record in order for the clerk to 400 disburse the surplus, after deducting costs, to the owner of 401 402 record. 403 WITNESS my hand and the seal of the court on (year) (Clerk) 404 405 (Deputy Clerk) By 406 407 If the surplus trustee is unable to locate the owner 408 of record entitled to the surplus within 1 year after appointment, the appointment shall terminate and the clerk shall 409 notify the surplus trustee that his or her appointment was 410 terminated. Thirty days after termination of the appointment of 411 the surplus trustee, the clerk shall treat the remaining funds 412

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as unclaimed property to be deposited with the Chief Financial

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414 Officer pursuant to chapter 717.

- (5) Proceedings regarding surplus funds in a foreclosure case do not in any manner affect or cloud the title of the purchaser at the foreclosure sale of the property.
- Section 3. Section 45.033, Florida Statutes, is created to read:
 - 45.033 Sale or assignment of rights to surplus funds in a property subject to foreclosure.--
 - (1) There is established a rebuttable presumption that the owner of record of real property on the date of the filing of a lis pendens is the person entitled to surplus funds after payment of subordinate lienholders who have timely filed a claim. A person claiming a legal right to the surplus as an assignee of the rights of the owner of record must prove entitlement to the surplus funds pursuant to this section. It is the intent of the Legislature to abrogate the common law rule that surplus proceeds in a foreclosure case are the property of the owner of the property on the date of the foreclosure sale.
 - (2) The presumption may be rebutted only by:
 - (a) Proof that the grantee or assignee is a grantee or assignee with the right to collect the surplus funds or any portion or percentage of the surplus funds by virtue of a voluntary transfer or assignment that qualifies as a transfer or assignment under this section; or
 - (b) Proof that the grantee or assignee is a grantee or assignee by virtue of an involuntary transfer or assignment of the right to collect the surplus. An involuntary transfer or

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assignment may be as a result of inheritance or as a result of the appointment of a guardian.

- (3) A voluntary transfer or assignment shall be a transfer or assignment qualified under this subsection, thereby entitling the transferee or assignee to the surplus funds or a portion or percentage of the surplus funds, if:
- (a) The transfer or assignment is in writing and the instrument:
- 1. If executed prior to the foreclosure sale, includes a financial disclosure that specifies the assessed value of the property, a statement that the assessed value may be lower than the actual value of the property, the approximate amount of any debt encumbering the property, and the approximate amount of any equity in the property. If the instrument was executed after the foreclosure sale, the instrument must also specify the foreclosure sale price and the amount of the surplus.
- 2. Includes a statement that the owner does not need an attorney or other representative to recover surplus funds in a foreclosure.
- 3. Specifies all forms of consideration paid for the rights to the property or the assignment of the rights to any surplus funds.
- (b) The transfer or assignment is filed with the court on or before 60 days after the filing of the certificate of disbursements.
- (c) There are funds available to pay the transfer or assignment after payment of timely filed claims of subordinate lienholders.

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(d) The transferor or assignee is qualified as a surplus trustee, or could qualify as a surplus trustee, pursuant to s. 45.034.

- (4) The court shall honor a transfer or assignment that complies with the requirements of subsection (3), in which case the court shall order the clerk to pay the transferor or assignee from the surplus.
- (5) If the court finds that a voluntary transfer or assignment does not qualify under subsection (3) but that the transfer or assignment was procured in good faith and with no intent to defraud the transferor or assignor, the court may order the clerk to pay the claim of the transferee or assignee after payment of timely filed claims of subordinate lienholders.
- is set aside, the owner of record shall be entitled to payment of the surplus after payment of timely filed claims of subordinate lienholders, but the transferee or assignee may seek in a separate proceeding repayment of any consideration paid for the transfer or assignment.
- (7) This section does not apply to a deed, mortgage, or deed in lieu of foreclosure unless a person other than the owner of record is claiming that a deed or mortgage entitles the person to surplus funds. Nothing in this section affects the title or marketability of the real property that is the subject of the deed or other instrument. Nothing in this section affects the validity of a lien evidenced by a mortgage.
- Section 4. Section 45.034, Florida Statutes, is created to read:

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2006 HB 65 CS CS

45.034 Qualifications and appointment of a surplus trustee 497 in foreclosure actions. --498 (1) A surplus trustee is a third-party trustee approved 499 pursuant to this section by the Florida Clerks of Court 500 Operations Corporation, established by s. 28.35. A surplus 501 trustee must be willing to accept cases on a statewide basis; 502 however, a surplus trustee may employ subcontractors that are 503 not qualified as a surplus trustee provided the surplus trustee 504 505 remains primarily responsible for the duties set forth in this 506 section. To be a surplus trustee, an entity must apply for 507 certification with the Florida Clerks of Court Operations 508 Corporation. The application must contain: 509 The name and address of the entity and of one or more 510 511 principals of the entity. 512 (b) A certificate of good standing from the Secretary of State indicating that the entity is an entity registered in this 513 514 state. (c) A statement under oath by a principal of the entity 515 certifying that the entity, or a principal of the entity, has a 516 minimum of 12 months' experience in the recovery of surplus 517 funds in foreclosure actions. 518 Proof that the entity holds a valid Class "A" private 519

Proof that the entity carries a minimum of \$500,000 in liability insurance, cash reserves, or bonding.

(f) A statement from an attorney licensed to practice in this state certifying that the attorney is a principal of the

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investigator license pursuant to chapter 493.

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entity or is employed by the entity on a full-time basis and that the attorney will supervise the management of the entity during the entity's tenure as a surplus trustee.

- (g) A statement under oath by a principal of the entity certifying that the principal understands his or her duty to immediately notify the corporation if the principal ever fails to qualify as an entity entitled to be a surplus trustee.
 - (h) A nonrefundable application fee of \$25.
- (3) The corporation shall certify any surplus trustee that applies and qualifies. Certification shall be on a calendar year basis. The corporation may renew a qualification upon receipt of the \$25 fee and a statement under oath from a principal of the surplus trustee certifying that the surplus trustee continues to qualify under this section.
- (4) The corporation shall develop a rotation system for assignment of cases to all qualified surplus trustees. Upon notification by a clerk that the clerk is holding a surplus in a case, the corporation shall assign the case to the next qualified surplus trustee in the rotation.
- (5) The primary duty of a surplus trustee is to locate the owner of record within 1 year after appointment. Upon locating the owner of record, the surplus trustee shall file a petition with the court on behalf of the owner of record seeking disbursement of the surplus funds. If more than one person appears to be the owner of record, the surplus trustee shall obtain agreement between such persons as to the payment of the surplus, or file an interpleader. The interpleader may be filed as part of the foreclosure case.

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HB 65 CS

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553	(6) A surplus trustee is entitled to the following service
554	charges and fees which shall be disbursed by the clerk and
555	payable from the surplus:
556	(a) Upon notice of appointment, a cost advance of 2
557	percent of the surplus.
558	(b) Upon obtaining a court order disbursing the surplus to
559	the owner of record, a service charge of 10 percent of the
560	surplus.
561	Section 5. Section 45.035, Florida Statutes, is created to
562	read:
563	45.035 Clerk's feesIn addition to other fees or service
564	charges authorized by law, the clerk shall receive service
565	charges related to the judicial sales procedure set forth in ss.
566	45.031-45.034 and this section:
567	(1) The clerk shall receive a service charge of \$60 for
568	services in making, recording, and certifying the sale and
569	title, which service charge shall be assessed as costs and shall
570	be advanced by the plaintiff before the sale.
571	(2) If there is a surplus resulting from the sale, the
572	clerk may receive the following service charges, which shall be
573	deducted from the surplus:
574	(a) The clerk may withhold the sum of \$25 from the surplus
575	
576	
E77	(b) The clerk is entitled to a service charge of \$10 for

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The clerk is entitled to a service charge of \$10 for

notifying a surplus trustee of his or her appointment.

each disbursement of surplus proceeds.

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(d) The clerk is entitled to a service charge of \$10 for contacting the Florida Clerks of Court Operations Corporation for assignment of the case to a surplus trustee, furnishing the surplus trustee with a copy of the final judgment and the certificate of disbursements, and disbursing to the surplus trustee the trustee's cost advance.

Section 6. Section 501.2078, Florida Statutes, is created to read:

501.2078 Violations involving individual homeowners during the course of residential foreclosure proceedings; civil penalties.--

(1) As used in this section:

- (a) "Homeowner" means any individual who is the owner of the property subject to a residential foreclosure proceeding.
- (b) "Residential foreclosure proceeding" means any action in a court of this state in which a party seeks to foreclose on a mortgage encumbering the mortgagor's primary dwelling.
- (c) "Victimize" means any course of action intended to dupe, swindle, or cheat a homeowner subject to a residential foreclosure proceeding. The factors that a court shall review when determining whether a course of action is victimizing a homeowner are:
- 1. The compensation received relative to the risk and the amount of work involved.
 - 2. The number of homeowners involved.
 - 3. The relative bargaining position of the parties.
- 607 4. The relative knowledge and sophistication of the parties.

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5. Representations made in the inducement.

6. The timing of the agreement.

- (2) Any person, other than a financial institution as defined in s. 655.005, who willfully uses, or has willfully used, a method, act, or practice in violation of this part, which method, act, or practice victimizes or attempts to victimize homeowners during the course of a residential foreclosure proceeding, and in committing such violation knew or should have known that such conduct was unfair or deceptive, is liable for a civil penalty of not more than \$15,000 for each such violation.
- (3) Any order of restitution or reimbursement based on a violation of this part committed against a homeowner in a residential foreclosure proceeding has priority over the imposition of any civil penalty for such violation pursuant to this section.
- (4) Civil penalties collected pursuant to this section shall be deposited into the Legal Affairs Revolving Trust Fund of the Department of Legal Affairs and allocated solely to the Department of Legal Affairs for the purpose of preparing and distributing consumer education materials, programs, and seminars to benefit homeowners in residential foreclosure proceedings or to further enforcement efforts.
 - (5) This section does not apply to:
- (a) The act of encumbering the dwelling subject to a residential foreclosure proceeding with a substitute or additional lien.
 - (b) A deed in lieu of foreclosure, a workout agreement, a

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	•••
637	bankruptcy plan, or any other agreement between a foreclosing
538	lender and a homeowner.
639	(c) Any action taken by a lender, mortgage broker,
640	assignee of a mortgage, or counsel for any such entity, in
641	foreclosing a mortgage or collecting on the note.
642	Section 7. Section 702.035, Florida Statutes, is amended
643	to read:
644	702.035 Legal notice concerning foreclosure
645	proceedingsWhenever a legal advertisement, publication, or
646	notice relating to a foreclosure proceeding is required to be
647	placed in a newspaper, it is the responsibility of the
648	petitioner or petitioner's attorney to place such advertisement,
649	publication, or notice. The advertisement, publication, or
650	notice shall be placed directly by the attorney for the
651	petitioner, by the petitioner if acting pro se, or by the clerk
652	of the court. Only the actual costs charged by the newspaper for
653	the advertisement, publication, or notice may be charged as
654	costs in the action.
655	Section 8. Subsection (9) of section 201.02, Florida
656	Statutes, is amended to read:
657	201.02 Tax on deeds and other instruments relating to real
658	property or interests in real property
659	(9) A certificate of title issued by the clerk of court
660	under s. $45.031(5)(4)$ in a judicial sale of real property under
661	an order or final judgment issued pursuant to a foreclosure
662	proceeding is subject to the tax imposed by subsection (1).
663	However, the amount of the tax shall be computed based solely on

the amount of the highest and best bid received for the property Page 24 of 25

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at the foreclosure sale. This subsection is intended to clarify existing law and shall be applied retroactively.

Section 9. This act shall take effect July 1, 2006.

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Bill No. HB 0065 CS

ADOPTED	(Y/N)
ADOPTED AS AMENDED	(Y/N)
ADOPTED W/O OBJECTION	(Y/N)
FAILED TO ADOPT	(Y/N)
WITHDRAWN	(Y/N)
OTHER	

Council/Committee hearing bill: Judiciary Appropriations

Representative(s) Porth offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsections (1) through (7) of section 45.031,

Florida Statutes, are amended to read:

- 45.031 Judicial sales procedure.--In any sale of real or personal property under an order or judgment, the <u>procedures set</u> forth in ss. 45.031-45.035 following procedure may be followed as an alternative to any other sale procedure if so ordered by the court:
- judgment, the court shall direct the clerk to sell the property at public sale on a specified day that shall be not less than 20 days or more than 35 days after the date thereof, on terms and conditions specified in the order or judgment. A sale may be held more than 35 days after the date of final judgment or order if the plaintiff or plaintiff's attorney consents to such time. The final judgment shall contain the following statement in conspicuous type:

Amendment No. 1

FINAL JUDGMENT.

24 IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE

25 ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE

26 ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, [INSERT INFORMATION FOR APPLICABLE COURT] WITHIN TEN (10) DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN. ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE PHONE NUMBER) TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR

SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT (NAME OF LOCAL OR NEAREST LEGAL AID OFFICE) FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

A copy of the final judgment shall be furnished by the clerk by first class mail to the last known address of every party in the action or to the attorney of record for such party. Any irregularity in such mailing, including the failure to include this statement in any final judgment or order, shall not affect the validity or finality of the final judgment or order or any sale held pursuant thereto. Any sale held more than 35 days after the final judgment or order shall not affect the validity or finality of the final judgment or order or any sale held pursuant thereto.

- (2) PUBLICATION OF SALE.--Notice of sale shall be published once a week for 2 consecutive weeks in a newspaper of general circulation, as defined in chapter 50, published in the county where the sale is to be held. The second publication shall be at least 5 days before the sale. The notice shall contain:
 - (a) A description of the property to be sold.
 - (b) The time and place of sale.
- (c) A statement that the sale will be made pursuant to the order or final judgment.
 - (d) The caption of the action.
- (e) A statement that any person claiming an interest in the surplus from the sale, if any, other than the property owner as of the date of the lis pendens, must file a claim within 60 days after the sale.
 - (f) The name of the clerk making the sale.

The clerk shall receive a service charge of up to \$60 for

Amendment No. 1

services in making, recording, and certifying the sale and title that shall be assessed as costs. The court, in its discretion, may enlarge the time of the sale. Notice of the changed time of sale shall be published as provided herein.

- (3) CONDUCT OF SALE; (2) DEPOSIT REQUIRED. -- The sale shall be conducted at public auction at the time and place set forth in the final judgment. The clerk shall receive the service charge set in s. 45.035 for services in making, recording, and certifying the sale and title that shall be assessed as costs. At the time of the sale, the successful high bidder shall post with the clerk a deposit equal to 5 percent of the final bid. The deposit shall be applied to the sale price at the time of payment. If final payment is not made within the prescribed period, the clerk shall readvertise the sale as provided in this section and pay all costs of the sale from the deposit. Any remaining funds shall be applied toward the judgment.
- (4) (3) CERTIFICATION OF SALE.--After a sale of the property the clerk shall promptly file a certificate of sale and serve a copy of it on each party not in default in substantially the following form:

(Caption of Action)

CERTIFICATE OF SALE

The undersigned clerk of the court certifies that notice of public sale of the property described in the order or final judgment was published in _____, a newspaper circulated in _____ County, Florida, in the manner shown by the proof of publication attached, and on _____, (year) , the property was offered for public sale to the highest and best bidder for cash. The highest

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 and best bid received for the property in the amount of \$ 116 was submitted by _____, to whom the property was sold. The 117 proceeds of the sale are retained for distribution in accordance 118 with the order or final judgment or law. WITNESS my hand and the 119 seal of this court on _____, (year) . 120 (Clerk) 121 By (Deputy Clerk) 122 (5) (4) CERTIFICATE OF TITLE. -- If no objections to the 123 sale are filed within 10 days after filing the certificate of 124 sale, the clerk shall file a certificate of title and serve a 125 copy of it on each party not in default in substantially the 126 following form: 127 128 (Caption of Action) 129 130 CERTIFICATE OF TITLE 131 132 The undersigned clerk of the court certifies that he or she 133 executed and filed a certificate of sale in this action on 134 (year) , for the property described herein and that no 135 objections to the sale have been filed within the time allowed 136 for filing objections. 137 The following property in County, Florida: 138 (description) 139 was sold to . 140 141 WITNESS my hand and the seal of the court on _____, (year) . 142 (Clerk) 143 By (Deputy Clerk)

title is filed the sale shall stand confirmed, and title to the

(6) (5) CONFIRMATION; RECORDING. -- When the certificate of

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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- (6) RECORDING. -- The certificate of title shall be recorded by the clerk.
 - (7) DISBURSEMENTS OF PROCEEDS. --
- (a) On filing a certificate of title, the clerk shall disburse the proceeds of the sale in accordance with the order or final judgment and shall file a report of such disbursements and serve a copy of it on each party not in default, and on the Department of Revenue if the department was named as a defendant in the action or if the Agency for Workforce Innovation or the former Department of Labor and Employment Security was named as a defendant while the Department of Revenue was providing unemployment tax collection services under contract with the Agency for Workforce Innovation through an interagency agreement pursuant to s. 443.13167.
- (b) The Certificate of Disbursements shall be in substantially the following form:

(Caption of Action)

168 CERTIFICATE OF DISBURSEMENTS

The undersigned clerk of the court certifies that he or she disbursed the proceeds received from the sale of the property as provided in the order or final judgment to the persons and in the amounts as follows:

Name Amount

Total Disbursements: \$____

Surplus Retained by Clerk (if any): \$

 IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS REMAINING AFTER
THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60
DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT
BE ENTITLED TO ANY REMAINING FUNDS. AFTER 60 DAYS, ONLY THE
OWNER OF RECORD AS OF THE DATE OF THE LIS PENDENS MAY CLAIM THE
SURPLUS.

WITNESS my hand and the seal of the court on _____, (year) . (Clerk)

By (Deputy Clerk)

- (c) If no objections to the report are served within 10 days after it is filed, the disbursements by the clerk shall stand approved as reported. If timely objections to the report are served, they shall be heard by the court. Service of objections to the report does not affect or cloud the title of the purchaser of the property in any manner.
- (d) If there are funds remaining after payment of all disbursements required by the final judgment of foreclosure and shown on the certificate of disbursements, the surplus shall be distributed as provided for in ss. 45.032-45.035.
- Section 2. Section 45.032, Florida Statutes, is created to read:
- 45.032 Disbursement of surplus funds after judicial sale.--
 - (1) For purposes of ss. 45.031-45.035, the term:
- (a) "Owner of record" means the person or persons who appear to be the owner of the property that is the subject of the foreclosure proceeding on the date of the filing of the lis pendens. In determining an owner of record, one need not perform

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- a title search and examination but may rely on the plaintiff's allegation of ownership in the complaint when determining the owner of record.
- (b) "Subordinate lienholder" means the holder of a subordinate lien shown on the face of the pleadings as an encumbrance on the property. The lien being foreclosed on is not a subordinate lien. A subordinate lienholder includes, but is not limited to, a subordinate mortgage, judgment, assessment lien, or construction lien. However, the holder of a subordinate lien shall not be deemed a subordinate lienholder if the holder was paid in full from the proceeds of the sale.
- (c) "Surplus funds" or "surplus" means the funds remaining after payment of all disbursements required by the final judgment of foreclosure and shown on the certificate of disbursements.
- (d) "Surplus trustee" means a person qualifying as a surplus trustee pursuant to s. 45.034.
- (2) There is established a rebuttable legal presumption that the owner of record on the date of the filing of a lis pendens is the person entitled to surplus funds after payment of subordinate lienholders who have timely filed a claim. A person claiming a legal right to the surplus as an assignee of the rights of the owner of record must prove to the court that the person is entitled to the funds. At any hearing regarding such entitlement, the court shall consider the factors set forth in s. 45.033 in determining whether an assignment is sufficient to overcome the presumption. The Legislature intends hereby to abrogate the common law rule that surplus proceeds in a foreclosure case are the property of the owner of the property on the date of the foreclosure sale.
 - (3) During the 60 days after the clerk issues the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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240 Certificate of Disbursements, the clerk shall hold the surplus pending a court order.

(a) If the owner of record claims the surplus during the 60 day period, and there is no subordinate lienholder, the court shall order the clerk to deduct any applicable service charges from the surplus and pay the remainder to the owner of record. The clerk may establish a reasonable requirement that the owner of record prove his or her identity before receiving the disbursement. The clerk may assist an owner of record in making a claim. An owner of record may use the following form in making a claim:

(Caption of Action)

OWNER'S CLAIM FOR MORTGAGE FORECLOSURE SURPLUS

256 State of

257 County of __

Under penalty of perjury, I (we) hereby certify that:

1. I was (we were) the owner of the following described real property in County, Florida, prior to the foreclosure sale and as of the date of the filing of the lis pendens:

(Legal description of real property)

- 2. I (we) do not owe any money on any mortgage on the property that was foreclosed other than the one that was paid off by the foreclosure.
- 3. I (we) do not owe any money that is the subject of an unpaid judgment, condominium lien, cooperative lien, or homeowner's association.

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271	4. I am (we are) not currently in bankruptcy.
272	5. I (we) have not sold or assigned my (our) right to the
273	mortgage surplus.
274	6. My (our) new address is:
275	7. If there is more than one owner entitled to the surplus,
276	we have agreed that the surplus should be paid jointly, or
277	to :, at the following address:
278	8. I (WE) UNDERSTAND THAT I (WE) ARE NOT REQUIRED TO HAVE A
279	LAWYER OR ANY OTHER REPRESENTATION AND I (WE) DO NOT HAVE TO
280	ASSIGN MY (OUR) RIGHTS TO ANYONE ELSE IN ORDER TO CLAIM ANY
281	MONEY TO WHICH I (WE) MAY BE ENTITLED.
282	8. I (WE) UNDERSTAND THAT THIS STATEMENT IS GIVEN UNDER
283	OATH, AND IF ANY STATEMENTS ARE UNTRUE THAT I (WE) MAY BE
284	PROSECUTED CRIMINALLY FOR PERJURY.
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286	(Signatures)
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288	Sworn to (or affirmed) and subscribed before me this
289	day of , (year) , by (name of person making statement)
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291	(Signature of Notary Public - State of Florida)
292	(Print, Type, or Stamp Commissioned Name of Notary Public)
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294	Personally Known OR Produced Identification
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296	Type of Identification Produced
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298	(b) If any person other than the owner of record claims an
299	interest in the proceeds during the 60 days, or if the owner of
300	record files a claim for the surplus but acknowledges that one
301	or more other persons may be entitled to part of all of the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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surplus, the court shall set an evidentiary hearing to determine entitlement to the surplus. At the evidentiary hearing, an equitee assignee has the burden of proving that he or she is entitled to some or all of the surplus funds. The court may grant summary judgment to a subordinate lienholder prior to or at the evidentiary hearing. The court shall consider the factors in s. 45.033 when hearing a claim that any person other than a subordinate lienholder or the owner of record is entitled to the surplus funds.

(c) If no claim is filed in the 60 days, the clerk shall appoint a Surplus Trustee from a list of qualified Surplus

Trustees as authorized in s. 45.034. Upon appointment, the clerk shall prepare a Notice of Appointment of Surplus Trustee, and shall furnish a copy to the Surplus Trustee. The form of the notice may be as follows:

(Caption of Action)

NOTICE OF APPOINTMENT OF SURPLUS TRUSTEE

The undersigned clerk of the court certifies that he or she disbursed the proceeds received from the sale of the property as provided in the order or final judgment to the persons named in the certificate of disbursements, and that surplus funds of surplus funds of remain and are subject to disbursement to the owner of record. You have been appointed as Surplus Trustee for the purpose of finding the owner or record in order for the clerk to disburse the surplus, after deducting costs, to the owner of record.

WITNESS my hand and the seal of the court on , (year) . (Clerk)

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By (Deputy Clerk)

pursuant to chapter 717.

- (4) If the Surplus Trustee is unable to locate the owner of record entitled to the surplus within one year of appointment, the appointment shall terminate and the clerk shall notify the Surplus Trustee that his or her appointment was terminated. Thirty days after termination of the appointment of the surplus trustee, the clerk shall treat the remaining funds as unclaimed property, to be deposited with the Chief Financial Officer
- (5) Proceedings regarding surplus funds in a foreclosure case do not affect or cloud the title of the purchaser at the foreclosure sale of the property in any manner.
- Section 3. Section 45.033, Florida Statutes, is created to read:
- 45.033 Sale or assignment of rights to surplus funds in a property subject to foreclosure. --
- (1) There is established a rebuttable legal presumption that the owner of record on the date of the filing of a lis pendens is the person entitled to surplus funds after payment of subordinate lienholders who have timely filed a claim. A person claiming a legal right to the surplus as an assignee of the rights of the owner of record must prove entitlement to the surplus funds pursuant to this section. The legislature intends hereby to abrogate the common law rule that surplus proceeds in a foreclosure case are the property of the owner of the property on the date of the foreclosure sale.
 - (2) The presumption may be rebutted only by:
- (a) The grantee or assignee of a voluntary transfer or assignment proving the right to collect the surplus funds or any portion or percentage of the surplus funds by proving that the

364	transfer

- transfer or assignment qualifies as required by this section; or
- (b) The grantee or assignee is a grantee or assignee by virtue of an involuntary transfer or assignment of the right to collect the surplus. An involuntary transfer or assignment may be as a result of inheritance or as a result of the appointment of a quardian.
- (3) A voluntary transfer or assignment shall be a transfer or assignment qualified under this subsection, thereby entitling the transferee or assignee to the surplus funds, or a portion or percentage of the surplus funds, if:
- (a) The transfer or assignment is in writing, and the instrument:
- 1. If the instrument was executed prior to the foreclosure sale, the instrument includes a financial disclosure that specifies the assessed value of the property, a statement that the assessed value may be lower than the actual value of the property, the approximate amount of any debt encumbering the property, and the approximate amount of any equity in the property. If the instrument was executed after the foreclosure sale, the instrument must also specify the foreclosure sale price and the amount of the surplus.
- 2. Includes a statement that the owner does not need an attorney or other representative to recover surplus funds in a foreclosure.
- 3. Specifies all forms of consideration paid for the rights to the property or the assignment of the rights to any surplus funds.
- (b) The transfer or assignment is filed with the court on or before 60 days after the filing of the Certificate of Disbursements.
 - (c) There are funds available to pay the transfer or

- assignment after payment of timely filed claims of subordinate
 lienholders.
 - (d) The transferor or assignee is qualified as a surplus trustee, or could qualify as a surplus trustee, pursuant to s. 45.034.
 - (4) The court shall honor a transfer or assignment that complies with the requirements set forth in subsection (3), in which case the court shall order to the clerk to pay the transferor or assignee from the surplus.
 - (5) If the court finds that a voluntary transfer or assignment does not qualify under subsection (3), but that it was procured in good faith and with no intent to defraud the transferor or assignor, the court may order the clerk to pay claim of the transferee or assignee after payment of timely filed claims of subordinate lienholders.
 - (6) If a voluntary transfer or assignment of the surplus is set aside, the owner of record shall be entitled to payment of the surplus funds after payment of timely filed claims of subordinate lienholders; but the transferee or assignee may, in a separate proceeding, seek repayment of any consideration paid for the transfer or assignment.
 - (7) This section does not apply to a deed, mortgage, or deed in lieu of foreclosure unless a person other than the owner of record is claiming that a deed or mortgage entitles the person to surplus funds. Nothing in this section affects the title or marketability of the real property that is the subject of the deed or other instrument. Nothing in this section affects the validity of a lien evidenced by a mortgage.
 - Section 4. Section 45.034, Florida Statutes, is created to read:
 - 45.034 Qualifications and appointment of a surplus trustee

426 in foreclosure actions.--

- (1) A surplus trustee is a third party trustee approved, pursuant to this section, by the Department of Financial Services. A surplus trustee must be willing to accept cases on a statewide basis; however, a surplus trustee may employ subcontractors that are not qualified as a surplus trustee provided that the surplus trustee remains primarily responsible for the duties set forth in this section.
- (2) A surplus trustee is an entity that holds and administers the surplus proceeds from a foreclosure pursuant to ss. 45.031-45.035.
- (3) A surplus trustee must apply for certification with the Department of Financial Services. The application must contain:
- (a) The name and address of the entity and of one or more principals of the entity.
- (b) A certificate of good standing from the Florida

 Secretary of State indicating that the entity is a Florida
 entity.
- (c) A statement under oath by a principal of the entity certifying that the entity, or a principal of the entity, has a minimum of 12 months experience in the recovery of surplus funds in foreclosure actions.
- (d) Proof that the entity hold a valid Class "A" private investigators license, pursuant to ch. 493.
- (e) Proof that the entity carries a minimum of \$500,000 in liability insurance, cash reserves or bonding.
- (f) A statement from an attorney licensed to practice in the state certifying that the attorney is a principal of the entity or is employed by the entity on a full-time basis, and that the attorney will supervise the management of the entity during its tenure as a surplus trustee.

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- (g) A statement under oath by a principal of the entity certifying that the principal understands his or her duty to immediately notify the Department of Financial Services should, in the future, ever fail to qualify as an entity entitled to be a surplus trustee.
 - (h) A nonrefundable application fee of \$25.
- (4) The Department of Financial Services shall certify any surplus trustee that applies and qualifies. Certification shall be on a calendar year basis. The Department of Financial Services may renew a qualification upon receipt of the \$25 fee and a statement under oath from a principal of the surplus trustee certifying that the surplus trustee continues to qualify under this section.
- (5) The Department of Financial Services shall develop a rotation system for assignment of cases to all qualified surplus trustees.
- (6) The primary duty of a surplus trustee is to locate the owner of record within one year of appointment. Upon locating the owner of record, the surplus trustee has the duty to file a petition with the court on behalf of the owner of record seeking disbursement of the surplus funds. If more than one person appears to be the owner of record, the surplus trustee has the duty to either obtain agreement between such persons as to the payment of the surplus, or file an interpleader. Such interpleader may be filed as part of the foreclosure case.
- (7) A surplus trustee shall be entitled to the following service charges and fees, which shall be disbursed by the clerk and payable from the surplus:
- (a) Upon obtaining a court order, a cost advance of 2% of the surplus.
 - (b) Upon obtaining a court order disbursing the surplus to

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- the owner of record, a service charge of 10% of the surplus.
- Section 5. Section 46.035, Florida Statutes, is created to read:
 - 45.035 Clerk's fees.--In addition to other fees or service charges authorized by law, the clerk shall receive service charges related to the judicial sales procedure set forth in ss. 45.031-45.035:
 - (1) The clerk shall receive a service charge of \$60 for services in making, recording, and certifying the sale and title, that shall be assessed as costs and that shall be advanced by the plaintiff before the sale.
 - (2) If there is a surplus resulting from the sale, the clerk may receive the following service charges, which shall be deducted from the surplus:
 - (a) The clerk may withhold the sum of \$25 from the surplus, which may only be used for purposes of educating the public as to the rights of homeowners regarding foreclosure proceedings.
 - (b) The clerk shall be entitled to a service charge of \$10 for notifying a surplus trustee of his or her selection.
 - (c) The clerk shall be entitled to a service charge of \$10 for each disbursement of surplus proceeds.
 - (d) The clerk shall be entitled to a service charge of \$10 for appointing a surplus trustee, furnishing the surplus trustee with a copy of the final judgment and the certificate of disbursements, and disbursing to the surplus trustee the trustee's cost advance.
 - Section 6. Section 50.031, Florida Statutes, is amended to read:
 - 50.031 Newspapers in which legal notices and process may be published.--No notice or publication required to be published in a newspaper in the nature of or in lieu of process of any

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kind, nature, character or description provided for under any 519 law of the state, whether heretofore or hereafter enacted, and 520 whether pertaining to constructive service, or the initiating, 521 assuming, reviewing, exercising or enforcing jurisdiction or 522 power, by any court in this state, or any notice of sale of 523 property, real or personal, for taxes, state, county or 524 municipal, or sheriff's, guardian's or administrator's or any 525 sale made pursuant to any judicial order, decree or statute or 526 any other publication or notice pertaining to any affairs of the 527 state, or any county, municipality or other political 528 subdivision thereof, shall be deemed to have been published in 529 accordance with the statutes providing for such publication, 530 unless for a county with less than a total population of 531 1,000,000 as reflected in the most recent Official Decennial 532 Census of the U.S. Census Bureau, as shown on the official 533 website of the U.S. Census Bureau, the same shall have been 534 published for the prescribed period of time required for such 535 publication, in a newspaper which at the time of such 536 publication shall have been in existence for 1 year and shall 537 have been entered as periodicals matter at a post office in the 538 county where published, or in a newspaper which is a direct 539 successor of a newspaper which together have been so published. 540 For counties with more than 1,000,000 total population as 541 reflected in the most recent Official Decennial Census of the 542 U.S. Census Bureau, as shown on the official website of the U.S. 543 Census Bureau, any notice of publication shall be deemed to have 544 been published in accordance with the statutes if the notice is 545 published in a newspaper that has been entered as a periodical 546 matter at a post office in the county where published and is 547 published a minimum of 5 days a week and has been in existence 548 and published a minimum of 5 days a week for 1 year or is a 549

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550	direct successor to a newspaper that has been in existence for 1
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552	week. Provided, however, that nothing herein contained shall
553	apply where in any county there shall be no newspaper in
554	existence which shall have been published for the length of time
555	above prescribed. No legal publication of any kind, nature or
556	description, as herein defined, shall be valid or binding or
557	held to be in compliance with the statutes providing for such
558	publication unless the same shall have been published in
559	accordance with the provisions of this section. Proof of such
560	publication shall be made by uniform affidavit.

Section 7. Section 501.2078, Florida Statutes, is created to read:

501.2078 Violations involving individual homeowners during the course of residential foreclosure proceedings; civil penalties. --

- (1) As used in this section:
- "Homeowner" means any individual who is the owner of (a) real property subject to a residential foreclosure proceeding.
- (b) "Residential foreclosure proceeding" means any action in a court of this state in which a party seeks to foreclose on a mortgage encumbering the mortgagor's primary dwelling.
- (c) "Victimize" means any course of action intended to dupe, swindle or cheat a homeowner subject to a residential foreclosure proceeding. The factors that a court shall review when determining whether a course of action is victimizing a homeowner are:
- 1. The compensation received relative to the risk and the amount of work involved.
 - 2. The number of homeowners involved.
 - 3. The relative bargaining position of the parties.

- 4. The relative knowledge and sophistication of the parties.
 - 5. Representations made in the inducement.
 - 6. The timing of the agreement.

- (2) Any person, other than a financial institution as defined in s. 655.005, who willfully uses, or has willfully used, a method, act, or practice in violation of this part, which method, act, or practice victimizes or attempts to victimize homeowners during the course of a residential foreclosure proceeding, and in committing such violation knew or should have known that such conduct was unfair or deceptive, is liable for a civil penalty of not more than \$15,000 for each such violation.
- (3) Any order of restitution or reimbursement based on a violation of this part committed against a homeowner in a residential foreclosure proceeding has priority over the imposition of any civil penalty for such violation pursuant to this section.
- (4) Civil penalties collected pursuant to this section shall be deposited into the Legal Affairs Revolving Trust Fund of the Department of Legal Affairs and allocated solely to the Department of Legal Affairs for the purpose of preparing and distributing consumer education materials, programs, and seminars to benefit homeowners in residential foreclosure proceedings or to further enforcement efforts.
 - (5) This section does not apply to:
- (a) The act of encumbering the dwelling subject to a residential foreclosure proceeding with a substitute or additional lien.
- (b) A deed in lieu of foreclosure, a workout agreement, a bankruptcy plan, or any other agreement between a foreclosing

612	lender	and	а	homeowner.
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- (c) A foreclosure sale, an eminent domain proceeding, a forfeiture, or any other legal process.
- Section 8. Section 702.035, Florida Statutes, is amended to read:
 - 702.035 Legal notice concerning foreclosure proceedings.--Whenever a legal advertisement, publication, or notice relating to a foreclosure proceeding is required to be placed in a newspaper, it is the responsibility of the petitioner or petitioner's attorney to place such advertisement, publication, or notice. The advertisement, publication, or notice shall be placed directly by the attorney for the petitioner, by the petitioner if acting pro se, or by the clerk of the court. Only the actual costs charged by the newspaper for the advertisement, publication, or notice may be charged as costs in the action.
 - Section 8. Section 8. Subsection (9) of section 201.02, Florida Statutes, is amended to read:
 - 201.02 Tax on deeds and other instruments relating to real property or interests in real property.
 - (9) A certificate of title issued by the clerk of court under s. 45.031(5)(4) in a judicial sale of real property under an order or final judgment issued pursuant to a foreclosure proceeding is subject to the tax imposed by subsection (1). However, the amount of the tax shall be computed based solely on the amount of the highest and best bid received for the property at the foreclosure sale. This subsection is intended to clarify existing law and shall be applied retroactively.
 - Section 9. This act shall take effect July 1, 2006.

642 ========= T I T L E A M E N D M E N T ============

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Remove the entire title and insert: 643 An act relating to foreclosure proceedings; amending s. 644 45.031, F.S.; adding required statement for inclusion into 645 a final judgment of foreclosure; requiring the clerk to 646 furnish a copy of the final judgment to parties; amending 647 information required to be in a notice of sale; amending 648 the form of a certificate of disbursements; creating s. 649 45.032, F.S.; providing definitions; establishing a 650 presumption of entitlement to surplus funds in certain 651 filings; providing for disbursement of surplus funds by 652 the clerk of court; giving foreclosed owner 60 days to 653 claim surplus; providing form for claim; providing that 654 persons other than foreclosed owner have 60 days to file a 655 claim or be barred; requiring evidentiary hearing; 656 providing for appointment of a surplus trustee; providing 657 time limits for surplus trustee; creating s. 45.033, F.S.; 658 providing requirements for a sale or assignment of rights 659 to surplus funds in a foreclosure proceeding; creating a 660 rebuttable presumption of entitlement to certain funds; 661 providing requirements for transfers or assignments in 662 rebuttal; providing for nonapplication to certain 663 instruments; specifying absence of effect on title or 664 marketability of certain property or validity of certain 665 liens; creating s. 45.034, F.S.; providing qualifications 666 of a surplus trustee; providing for appointment of a 667 surplus trustee; providing fees; creating s. 45.035, F.S.; 668 providing for clerk's fees in foreclosure actions; 669 amending s. 50.031, F.S.; requiring notices published in 670 counties over 1,000,000 in total population to be 671 published in daily newspapers; creating s. 501.2079, F.S.; 672 providing definitions; providing a civil penalty for 673

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knowingly using unfair or deceptive homeowner
victimization methods, acts, or practices in residential
foreclosure proceedings; specifying higher priority of an
order of restitution or reimbursement over imposition of a
civil penalty; providing for deposit of civil penalties
into the Legal Affairs Revolving Trust Fund of the
Department of Legal Affairs; allocating such funds for
certain purposes; providing exceptions; specifying
nonapplication to certain encumbrances; amending s.
702.035, F.S.; limiting costs chargeable in a foreclosure
proceeding; amending s. 201.02, F.S.; correcting a cross-
reference; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #:

HB 391 CS

Community Associations

SPONSOR(S): Domino TIED BILLS:

None.

IDEN./SIM. BILLS: None.

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	7 Y, 0 N, w/CS	Blalock	Bond
2) Judiciary Appropriations Committee		Brazzell Why	DeBeaugrine
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located. A declaration of condominium may be amended as provided in the declaration. This bill provides that any provision in the declaration of condominium, articles of incorporation, or bylaws that requires the consent or joinder of mortgagees of condominium property in order to amend these documents is void. To the extent that this bill cannot make such provisions void, this bill provides notice procedures for consent or joinder by a mortgage holder.

A homeowners' association is a corporation responsible for the operation of a community in which voting membership is made up of parcel ownership and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. This bill increases the regulation of homeowners' associations and establishes conformity in the laws regulating homeowners' associations and condominium associations by:

- Revising the requirements for the inspection and copying of records;
- Revising what must be included in the associations' annual budget;
- Revising the financial reporting requirements; and
- Providing for guarantees of common expenses when they are not included in the declaration.

This bill also eliminates mediation of disputes between homeowners' associations and members from the iurisdiction of the Department of Business of Professional Regulation. The mandatory mediation of such disputes will have to be conducted by private mediators.

This bill appears to have a minimal negative fiscal impact on state revenues. This bill does not appear to have a fiscal impact on local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME:

h0391b.JA.doc 3/13/2006

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill eliminates the current requirement that certain disputes between homeowners and homeowners associations be referred to the Department of Business and Professional Regulation for assignment of a mediator.

Safeguard Individual Liberty: This bill decreases restrictions on condominium associations when amending declarations of condominium, articles of incorporation, or bylaws. This bill increases regulation of homeowners' associations.

B. EFFECT OF PROPOSED CHANGES:

Background

A condominium is a "form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements". A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located. A declaration is like a constitution in that it:

strictly governs the relationships among condominium units owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.³

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property. A declaration of condominium may be amended as provided in the declaration. If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of two-thirds of the units.

Homeowners' association means a Florida corporation responsible for the operation of a subdivision in which voting membership is made up of parcel ownership and in which membership is a mandatory condition of parcel ownership and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.⁶ Homeowners' associations are regulated under chapter 720, F.S.

Effect of Bill

Covenant Revitalization

Proposed Changes

This bill creates s. 712.11, F.S., to provide that a homeowner's association that is not subject to chapter 720 may use the procedures established in ss. 720.403, F.S. - 720.407, F.S., to revive covenants that have lapsed under the terms of chapter 712, F.S.

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¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ Neuman v. Grand View at Emerald Hills, 861 So.2d 494, 496-497 (Fla. 4th DCA 2003)

⁴ Section 718.104(5), F.S.

⁵ Section 718.110(1)(a), F.S.

⁶ Section 720.301(9), F.S.

Mortgagee Consent or Joinder of Amendments to Declaration of Condominium

Current Law

Section 718.110(11), F.S., provides that any declaration of condominium recorded after April 1, 1992. may not require the consent or joinder of mortgagees in order for an association to pass an amendment to the declaration. This is limited to amendments which do not materially affect the rights or interests of the mortgagees, or as otherwise required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. Current law provides that such consent may not be unreasonably withheld. In the event mortgagee consent is provided other than by properly recorded joinder, such consent must be evidenced by affidavit of the association recorded in the public records of the county where the declaration is recorded.7

Proposed Changes

This bill amends s. 718.110(11), F.S., to provide that any provision in the declaration of condominium, articles of incorporation, or bylaws that requires the association to obtain consent or joinder of mortgagees to amend the declaration of condominium, articles of incorporation, or bylaws are void. This provision is not limited to amendments materially affecting the rights or interests of the mortgagees, or as otherwise required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. This bill also provides that consent or joinder are not to be unreasonably withheld, and that it is presumed that amendments to the declaration of condominium, articles of incorporation, or bylaws do not materially affect the rights or interests of mortgagees.

This bill provides findings by the Legislature that consent or joinder to amendments that do not materially affect the rights or interests of mortgagees is unreasonable and is a substantial burden on the condominium owners and association. This bill also provides that there is a compelling state interest in enabling condominium association members to approve amendments.

This bill provides that any holder of a mortgage on any portion of a condominium, which is recorded after October 1, 2006, and where the declaration of condominium, articles of incorporation, or bylaws require consent or joinder of a mortgagee to pass an amendment, must provide written notice by certified mail to the association of the address where the mortgagee may be contacted in regard to any proposed amendments.

The association must keep the names and addresses of the mortgagees, which the association must use when sending a request for such consent or joinder. A request for consent or joinder must be mailed to a mortgagee by certified mail to the address provided by the mortgagee. For a mortgage recorded after October 1, 2006, consent to an amendment is deemed to have been given by a holder of a mortgage who fails to provide the required written notice and consent information. In addition, any mortgagee who fails to respond by certified mail within 30 days after the date the association mails a request for consent or joinder is deemed to have consented to the proposed amendment.

For mortgages in existence prior to October 1, 2006, and where consent or joinder is required for amendments, and where mortgagees are not required to provide notice to the association of their contact information in order to be eligible to receive notices regarding proposed amendments, associations can modify provisions in the declaration of condominium, articles of incorporation, or bylaws. The Association must notify all mortgagees who have mortgages on any part of the condominium and mortgagees must provide the same contact information as for mortgages that are recorded after October 1, 2006. Any mortgagee who does not provide contact information as required will be deemed to have consented to all future proposed amendments. In addition, failure of any mortgagee to respond to a request for the consent or joinder to a proposed amendment within 30 days after the date that a request is sent to the mortgagee by certified mail is deemed to have consented to the amendment.

Section 718.110(11), F.S.

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STORAGE NAME: h0391b.JA.doc This bill provides that in order to properly notify holders of existing mortgages the condominium association conducts a diligent search to identify all existing mortgagees and an address for the required notice to be sent to each mortgagee. Service of the notice must be on the mortgagee's registered agent. Where there is no registered agent, the notice must be sent to the address in the original recorded mortgage unless there is a different address in a more recently recorded assignment or in the records maintained by the condominium association. All notices are sent by certified mail and if the mortgagee fails to provide the contact information requested within 30 days after the date of mailing of the letter from the association, then the mortgagee is deemed to have consented to the proposed amendment. A representative of the condominium association must execute an affidavit confirming that a diligent search was conducted to identify all outstanding mortgages on the condominium. The affidavit must summarize the steps that were taken in connection with the search and the notification of all mortgagees. The affidavit must be placed in the association's minute book as an attachment to the minutes of the meeting in which the board of directors considers the affidavit.

After October 1, 2006, no new declaration of condominium, articles of incorporation, or bylaws may require the consent or joinder of more than 51 percent of the eligible mortgagees in connection with any proposed amendment unless a higher percentage is required by the FNMA or FHLMC. A new declaration of condominium, articles of incorporation, or bylaws must also require mortgagees to provide to the condominium association the address to which notices may be sent, in order for the mortgagees to have the right to be contacted in connection with any proposed amendments.

This bill provides that a provision requiring consent or joinder of holders of mortgages is enforceable only by mortgagees of record as of the date an amendment is recorded and only by mortgagees who have complied with providing the notice and contact information as required above. Any amendment adopted without the required consent of a mortgagee is deemed voidable by any mortgagee who was entitled to notice and the opportunity to consent.

This bill also provides that in order to establish that a mortgagee is not unreasonably withholding consent, he or she must include in his or her reply to the condominium association's request for consent or joinder a statement of the specific reasons the proposed amendment is claimed to materially and adversely affect the rights and interests of such mortgagee.

In connection with any litigation between a condominium association and a lender with regard to whether consent has been unreasonably withheld, the prevailing party is entitled to recover his or her costs and reasonable attorney's fees.

Mixed-Use Condominiums

Current Law

Section 718.404, F.S., pertains to mixed-use condominiums, which are condominiums where there are both residential and commercial units. Section 718.404(1), F.S., provides that for mixed-use condominiums, the owner of a commercial unit does not have the authority to veto amendments to the declaration, articles of incorporation, bylaws, or rules or regulations of the association. Section 718.404(2), F.S., is also amended to provide that when the number of residential units is equal to or greater than 50% of the total number of units operated by the association, owners of the residential units are entitled to vote for a majority of the seats on the board of administration.

Proposed Changes

This bill amends subsections (1) and (2) of s. 718.404, F.S., to provide that these subsections are intended to be applied retroactively as a remedial measure.

Homeowners' Associations

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Current Law

Current law regulates homeowner associations in ch. 720, F.S., and s. 720.302, F.S., provides that ch. 720, F.S. does not apply to condominium associations. This bill amends s. 720.302, F.S., to provide an exception to the current law providing that chapter 720, which regulates homeowners' associations, does not apply to condominium associations.

Proposed Changes

This bill amends s. 720.302(4), F.S. to provide that ch. 720, F.S. does not apply to any association regulated under chapters 718 (condominiums), 719 (cooperatives), 721 (timeshares), or 723 (mobile home parks), except to the extent that a provision of ch. 718, 719, or 721, F.S. is expressly incorporated into ch. 720, F.S. for the purpose of regulating homeowners' associations.

This bill amends s. 720.302(5), F.S., to remove the phrase "not for profit" to conform to the other changes in this section. This bill also amends s. 720.302(5), F.S., to provide that corporations operating residential homeowners' associations in Florida are to be governed by and subject to ch. 607, F.S. (corporations), if the association was incorporated under the provisions of that chapter, or to ch. 617, F.S. (not for profit corporations), if the association was incorporated under the provisions of that chapter.

Homeowners' Association Board Meetings

Current Law

Section 720.303(2), F.S., provides procedures for association board meetings. A meeting of the board occurs whenever a quorum of the board gathers to conduct association business. Board meetings are open to all members, except for those meetings between the board and its attorney relating to proposed or pending litigation. Members also have the right to attend all board meetings and speak on any matter on the agenda for at least 3 minutes.

Notice of a board meeting must be posted in a conspicuous place in the community at least 48 hours prior to a meeting, except in an emergency. If notice of the board meeting is not posted in a conspicuous place, then notice of the board meeting must be mailed or delivered to each association member at least 7 days prior to the meeting, except in an emergency. For associations that have more than 100 members, the bylaws may provide for a reasonable alternative to this posting or mailing requirement. These alternatives include publication of notice, provision of a schedule of board meetings, conspicuous posting and repeated broadcasting of a notice in a certain format on a closed-circuit cable television system serving the association, or electronic transmission if the member consents in writing to such transmission.⁸

A board may not levy assessments at a meeting unless the notice of the meeting includes the nature of those assessments and a statement that the assessments will be considered at the meeting.⁹

Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This also applies to meetings of any committee or similar body when a final decision will be made regarding the spending of association funds. Proxy voting or secret ballots are also not allowed when a final decision will be made on approving or disapproving architectural decisions with respect to a specific parcel of residential property owned by a member of the community.¹⁰

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⁸ Section 720.303(2)(c)1, F.S.

⁹ Section 720.303(2)(c)2, F.S.

¹⁰ Section 720.303(2)(c)3, F.S. **STORAGE NAME**: h0391b.JA.doc

Proposed Changes

This bill amends s. 720.303(2), F.S., as amended by section 18 of chapter 2004-345 and section 135 of chapter 2005-2, Laws of Florida, 11 as follows:

- This bill amends s. 720.303(2)(a), F.S., to provide that provisions of this subsection also apply to the meetings of any committee or other similar body when a final decision is made regarding the spending of association funds and to meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.
- This bill amends s. 720.303(2)(c)1., F.S. to change the phrase "for communities with more than 100 members" to the more accurate phrase "for communities with more than 100 parcels". This bill also amends s. 720.303(2)(c)1., F.S., to remove the requirement that the agenda be broadcast along with the notice when broadcast notice of a board meeting is provided.
- This bill amends s. 720.303(2)(c)2., F.S., by changing the word "assessment" to "special assessment". This bill eliminates the provision that an assessment may not be levied at a board meeting unless notice of a board meeting states that regular assessments will be considered. This bill provides that such notice is only required when a special assessment will be considered.
- This bill amends s. 720.303(2)(c)3., F.S., to provide that directors may vote by proxy or by secret ballot during meetings of any committee or other similar body when a final decision will be made regarding the spending of association funds and when any body is vested with the power to approve or disapprove architectural decisions.
- This bill also repeals s. 720.303(2), F.S., as amended by section 2 of chapter 2004-345 and section 15 of chapter 2004-353, Laws of Florida, to remove conflicting versions of this subsection.

Homeowners' Association Inspection and Copying of Records

Current Law

Section 720.303(5), F.S., requires that a homeowners' association allow its members to inspect and copy its official records within 10 days of a written request for access. A failure to comply with such a request in a timely fashion creates a rebuttable presumption that the association failed to do so, and entitles the requesting party to actual damages, or to a minimum of \$50 per calendar day, commencing on the eleventh business day. A homeowners' association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not impose a requirement that a parcel owner demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records less than one 8hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including without limitation, the costs of copying. The association may charge up to 50 cents per page for copies made on the associations copy machine. If the association does not have a copy machine available where the records are kept, or if the records requested to be copied exceed 25 pages, then the association may have copies made by an outside vendor and may charge the actual cost of copying.

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¹¹ In 2004 the Legislature passed SB 1184, which amended s. 720.303(2),F.S., in section 2 and section 18 of the bill. In 2004, the Legislature passed SB 2984, which also amended s. 720.303(2), F.S., in section 15 of the bill. This bill is amending s. 720.303(2), F.S., as amended by section 18 of chapter 2004-345 and section 135 of chapter 2005-2, Laws of Florida, and is repealing s. 720.303(2), F.S., as amended by section 2 of chapter 2004-345 and section 15 of chapter 2004-353, Laws of Florida.

Current law expressly exempts the following from inspection by a member or parcel owner: any record protected by attorney-client or work-product privilege; information obtained in association with the lease, sale or transfer of a parcel that is otherwise privileged by state or federal law; disciplinary, health, insurance and personnel records of the association's employees; or medical records of parcel owners or other community residents.¹²

Proposed Changes

This bill amends s. 720.303(5), F.S., to provide that an association or its agent is not required to provide a prospective purchaser or lienholder with information about the residential subdivision or the association unless required by this chapter to be made available or disclosed. This bill also provides that an association or agent may charge a reasonable fee to a prospective purchaser or lienholder or the current parcel owner or member for providing good faith responses to requests for information, except for information required by law. The fee cannot exceed \$150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

This bill provides that an association and its agent are not liable for providing information in good faith if the person providing the information includes a written statement in the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."

Homeowners' Association Budgets

Current Law

Section 720.303(6), F.S., provides that an association must prepare an annual budget.

Proposed Changes

This bill amends s. 720.303(6), F.S., to require that the annual budget set out the annual operating expenses.

This bill also amends s. 720.303(6), F.S., to provide that the annual budget must include reserve accounts for capital expenditures and deferred maintenance, in addition to annual operating expenses. This bill provides that these accounts must provide for items such as roof replacement, building painting, and pavement resurfacing, and for any other item for which the expense or cost is more than \$10,000. This subsection does not apply to a budget where a majority of the members of an association have voted to provide no reserves or fewer reserves required by this subsection. This bill also provides that prior to turning over control of an association to the unit owners, the developer may vote to waive or reduce the reserves for the first 2 fiscal years of the association's operation. After this time, reserves can be waived or reduced by a majority vote of all nondeveloper voting interests at an association meeting.

This bill amends s. 720.303(6), F.S., to provide for how the reserve accounts will be funded. This bill provides for funding formulas for reserves and requires that the funding formulas be based on either a separate analysis of each required asset or a pooled analysis of two or more required assets. This bill also provides that reserve funds and any interest accruing must stay in the reserve account, and can only be used for reserve expenditures unless another use is approved by a majority vote of the association members.

The language used in this section of the bill to amend s. 720.303(6), F.S. is identical in form to the language used in s. 718.112(2)(f), F.S., regarding the annual budgets of condominium associations.

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¹² Section 720.303(1), (2), (3), (4), F.S.

¹³ Required assets are the assets that this bill requires to be included in the reserve accounts including, but not limited to, roof replacement, building painting, pavement resurfacing, and any item for which maintenance expense or replacement cost exceeds \$10,000.

Homeowners' Association Financial Reporting

Current Law

Section 720.303(7), F.S., requires homeowners' associations to prepare an annual financial report within 60 days after the close of the fiscal year. The association must provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member.

Proposed Changes

This bill amends s. 720.303(7), F.S., to increase from 60 to 90 days the time that an association has to prepare and complete an annual financial report after the close of the fiscal year. Within 21 days after the final financial report is completed by the association, but no later than 120 days after the end of the fiscal year, the association must provide each member with a copy of the annual financial report. Homeowners' associations and condominium associations are generally operated and managed the same way, and the language used in this bill is identical in form to language contained in s. 718.111(13), F.S., regarding financial reporting for condominium associations.

This bill amends s. 720.303(7)(a), F.S., to provide that financial statements are to be completed in accordance with the accounting principles adopted by the Florida Board of Accountancy.

Attorney's Fees for Actions between an Association and a Member

Current Law

Section 720.305, F.S., provides that an action to enforce the rules and provisions established by the homeowners' association can be brought by the association or by any member against the association, a member, any director of the association, and any tenants, guests, or invitees occupying a parcel or common area. This section also provides that the prevailing party in any litigation is entitled to recover reasonable attorney's fees and costs. A member that has successfully sued his or her association must, under current law, return a portion of those fees back to the association. Thus, under current law a member cannot be fully compensated for his or her attorney's fees.

Proposed Changes

This bill amends s. 720.305, F.S., to provide that any member who prevails against an association and is awarded attorney's fees may also be awarded an amount sufficient to cover the member's pro-rata portion of those fees.

Meetings of Association Members; Amendments

Current Law

Section 720.306(1)(c), F.S., provides that an amendment may not materially and adversely alter the proportionate voting interest attached to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association, unless all owners and lienholders join in the execution of the amendment. A change in quorum requirements is not an alteration of voting interests.

Section 720.306(6), F.S., provides that members and parcel owners have the right to attend all membership meetings and to speak at any meeting. A member and a parcel owner have the right to speak for at least 3 minutes on any agenda item if the member or parcel owner submits a written request to speak prior to the meeting.

Proposed Changes

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This bill amends s. 720.306(1)(c), F.S., adding the provision that the merger or consolidation of associations under ch. 607, F.S. (regulating corporations) or ch. 617, F.S. (regulating non-profit corporations), is not considered a material or adverse alteration of the proportionate voting interest appurtenant to a parcel.

This bill also amends s. 720.306(6), F.S., removing the phrase "opened for discussion". This change provides that members and parcel owners have the right to speak at any meeting with reference to all items on the agenda and not to all items opened for discussion or on the agenda.

Transition of Homeowners' Association Control

Current Law

Section 720.307, F.S., provides procedures for turning over control of an association from the developer to parcel owners. The transition of association control begins with the election of the board of directors of the homeowners' association by the members. At the time the members elect the board of directors, the developer must deliver various documents to the board.

Proposed Changes

This bill amends s. 720.307, F.S., to provide an additional document that the developer must provide to the board of directors. Along with the documents that must be provided by the developer under current law, this bill requires that the developer to also provide the board of directors the financial records, including the statements of the association, and source documents from the incorporation of the association through the date of turnover. This bill also provides that an independent certified public accountant must audit the records and determine that the developer was charged with, and paid, the proper amounts of assessments.

The language in this section of the bill is taken from language found in s. 718.301(4)(c), F.S., of the Condominium Act. The current law for homeowners' associations pertaining to transition of association control is very similar to the current Condominium Act and this bill provides conformity between homeowners' associations and the condominium associations.

Guarantees of Common Expenses

Current Law

The developer of a community is responsible for paying the costs of the common expenses of the community until the sale of the parcels to a purchaser in which time the developer pays a proportionate share of the common expenses with the parcel owners. Condominium law allows a developer to be excused from payment of common expenses if the common expenses of all unit owners are guaranteed not to increase and the developer agrees to pay all common expenses incurred but not covered by unit owner payments during the period of the guarantee.¹⁴

Proposed Changes

This bill amends s. 720.308, F.S., to incorporate the guarantees of common expenses provision found in condominium law into homeowners' association law. Currently, s. 720.308, F.S., provides for guarantees of common expenses if it is provided for in the declaration. This bill amends s. 720.308, F.S., to provide for guarantees of common expenses if a guarantee is not included in the purchase contract or declaration. This bill provides that a guarantee is effective only upon approval of a majority of the voting interests of the members other than the developer. This bill also provides that:

¹⁴ Section 718.116, F.S.

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- The time period of a guarantee must have a specific beginning and ending date or event;
- The dollar amount of the guarantee must be an exact dollar amount for each parcel identified in the declaration:
- The cash payments required from the developer must be when the revenue collected by the association are not sufficient to provide payment for all common expenses; and
- The expenses incurred in the production of non-assessment revenues, not in excess of the non-assessment revenues, must not be included in the common expenses. If expenses attributable to non-assessment revenues exceed non-assessment revenues, then the developer must only fund the excess expenses.

This section of the bill mirrors what is currently contained in s. 718.116(9)(a)2, F.S., of the Condominium Act and provides conformity between condominium associations and homeowners' associations.

Dispute Resolution

Current Law

Section 720.311, F.S., established dispute resolution procedures for homeowners' associations and their members. Current law requires that recall disputes must be resolved by binding arbitration conducted by the Department of Business and Professional Regulation (DBPR). Any recall dispute filed with the DBPR must be conducted in accordance with the provisions of ss. 718.1255 and 718.112(2)(j), F.S., which establish requirements and procedures for the removal of condominium directors, and dispute resolution procedures for condominiums. Section 718.1255, F.S., requires that arbitration proceedings relating to the recall of a condominium director must be conducted pursuant to the arbitration procedures in s. 718.1255, F.S., and provides that, if the condominium association fails to comply with the final order of arbitration, the DBPR may take action pursuant to s. 718.501, F.S. Section 718.501, F.S., establishes the powers and duties of the DBPR, which include the power to conduct investigations, issue orders, conduct consent proceedings, bring actions in civil court on behalf of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution, and to assess civil penalties.

Section 720.311(1), F.S., provides that the DBPR must conduct mandatory binding arbitration of election disputes in accordance with s. 718.1255, F.S. Election and recall disputes are not eligible for mediation. Current law requires a \$200 filing fee and authorizes the DBPR to assess the parties an additional fee in an amount adequate to cover the DBPR's costs and expenses. The fee paid to the DBPR must be a recoverable cost in the arbitration proceeding and the prevailing party must be paid its reasonable costs and attorney's fees in an amount found reasonable by the arbitrator. Section 720.311(1), F.S., provides that any petition for mediation or arbitration shall toll the applicable statute of limitations. The statute authorizes the DBPR to adopt rules to implement this section.

Section 720.311(2)(a), F.S., provides that the following disputes must be filed with the DBPR for mandatory mediation by the division before the dispute is filed in court:

- Disputes between an association and a parcel owner regarding use of, or changes to, the parcel or the common areas and other covenant enforcement disputes;
- Disputes regarding amendments to the association documents;
- Disputes regarding meetings of the board and committees appointed by the board;
- Disputes regarding membership meetings not including election meetings; and
- Disputes regarding access to the official records of the association.

The mediation is conducted under the applicable Florida Rules of Civil Procedure, and the proceeding is privileged and confidential to the same extent as court-ordered mediation. Current law provides that persons not a party to the suit may not attend the mediation conference without the consent of all the parties. Current law also requires a \$200 fee to defray the costs of the mandatory mediation, authorizes the DBPR to charge additional fees to cover the costs of the mandatory mediation, and

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requires that the parties share the costs of mediation equally, unless the parties agree otherwise. If the mandatory mediation is not successful, the parties may file the dispute in a court or enter the dispute into binding or non-binding arbitration to be conducted by the DBPR or private arbitrator. Section 720.311(2)(d), F.S, provides that the mediation procedure may be used by non-mandatory homeowners' associations.

Section 720.311(2)(c), F.S., provides standards to DBPR certification and training of mediators and arbitrators, and DBPR-certified mediators must also be certified by the Florida Supreme Court.

Section 720.311(3), F.S., currently provides that the DBPR must develop an education program to assist homeowners, associations, board members, and managers in understanding the use of alternative dispute resolution techniques in resolving disputes between parcel owners and associations or between owners. Current law also provides that the certification program for arbitrators and mediators and the education program for homeowners' associations and their members would be funded by moneys and filing fees generated by the arbitration and mediation proceedings.

Proposed Changes

This bill amends s. 720.311, F.S., to provide:

- That all references to mediation be changed to "presuit" mediation;
- That disputes subject to presuit mediation do not include the collection of any assessments, fine, or other financial obligation, including attorney's fees and costs, or any action to enforce a prior mediation settlement;
- That the presuit mediation requirements of s. 720.311, F.S., do not apply to any dispute where emergency relief is required;
- A form for the written offer to participate in presuit mediation that must be substantially followed by the aggrieved party and which is served on the responding party. The form is titled "Statutory Offer To Participate In Presuit Mediation" and is a boilerplate form that a party must use or substantially follow when making an offer to participate in presuit mediation. The form provides that the party may waive presuit mediation so that this matter may proceed directly to court:
- That service of the statutory offer is effected by sending the statutory form, or a letter that
 conforms substantially to the statutory form, by certified mail, with an additional copy being sent
 regular first-class mail, to the address of the responding party as it appears on the books and
 records of the association;
- That dispute resolution to resolve disputes between associations and a parcel owner is no longer within the jurisdiction of the Department of Business and Professional Regulation;
- That the responding party will have 20 days from the date the offer is mailed to serve a
 response in writing. The response is to be served by certified mail, with an additional copy
 being sent by regular first-class mail to the address shown on the offer;
- That the mediator may require advance payment of fees and costs. This bill removes the \$200 filing fee requirement, and other language providing for the fees for a DBPR mediator.
- That failure of either party to appear for mediation, respond to the offer, agree on a mediator, or
 pay the fees and costs will entitle the other party to seek an award of the costs and fees
 associated with mediation;
- That if presuit mediation cannot be conducted within 90 days after the offer to participate then an impasse will be deemed unless both parties agree to extend the deadline;
- That any issue or dispute that is not resolved at presuit mediation, the prevailing party in any subsequent arbitration or litigation proceeding shall be entitled to seek recovery of all costs and attorney's fees incurred in the presuit mediation process;
- That DBPR is no longer responsible for certification programs for mediators or education programs for homeowners' associations.

C. SECTION DIRECTORY:

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Section 1 creates s. 712.11, F.S., to provide that homeowners' associations may use procedures established in ss. 720.403, F.S. - 720.407, F.S., to revive covenants that have lapsed under the terms of Chapter 712, F.S.

Section 2 amends s. 718.110, F.S., providing for certain procedures for amending declarations of condominium, articles of incorporation, or bylaws, where the declarations of condominium, articles of incorporation, or bylaws requires the association to obtain consent and joinder of mortgagees.

Section 3 amends s. 718.404, F.S., to provide that subsections (1) and (2) are intended to be applied retroactively as a remedial measure.

Section 4 amends s. 720.302, F.S., to provide an exception to the current law that ch. 720, F.S., does not apply to any association under ch. 718, F.S., ch. 719, F.S., or ch. 721, F.S.

Section 5 amends s. 720.303, F.S., to provide that provisions under s. 720.303(2), F.S. also apply to committee meetings when a decision will be made on spending association funds, and to meetings of any body that has the power to make architectural decisions. This section also amends s. 720.303(5), F.S., to provide for when an association is not required to provide information about the residential subdivision or the association, that the association may charge a fee up to \$500 for providing this information, and for when an association is not liable for providing such information. This section amends 720.303(7), F.S., revising the time period for when an association must prepare and complete a financial report for the preceding fiscal year. This section amends s. 720.303(6), F.S., requiring the annual budget of an association to set out the annual operating expenses and include reserve accounts for capital expenditures and deferred maintenance.

Section 6 repeals s. 720.303(2), F.S.

Section 7 amends s. 720.305, F.S., to provide that a member who prevails in an action against an association may recover additional amounts for his or her member share of the assessment that she will have to pay for the associations legal fees and costs.

Section 8 amends s. 720.306, F.S., revising provisions pertaining to meetings of members and amendments providing that merger or consolidation of associations is not considered a material or adverse alteration of the proportionate voting interest appurtenant to a parcel and providing that members and parcel owners have the right to speak at any meeting in reference to all agenda items.

Section 9 amends s. 720.307, F.S., to require that at the time the members are entitled to elect at least a majority of the board of directors, the developer must deliver the financial records of the association.

Section 10 amends s. 720.308, F.S., to establish guarantees of common expenses if a guarantee is not included in the purchase contract or declaration.

Section 11 amends s. 720.311, F.S., revising the dispute resolution provisions for disputes between an association and a parcel owner. This section also provides a statutory form to be used as the written offer to participate in presuit mediation and provides that service of the offer be accomplished by sending the offer in a certain manner.

Section 12 provides an effective date of July 1, 2006, except as otherwise expressly provided in this bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

STORAGE NAME: DATE: h0391b.JA.doc 3/13/2006 The Department of Business and Professional Regulation (DBPR) estimates that this bill will result in a reduction of \$126,018 in mediation filing fees and expenses received by the DBPR. It will also result in a reduction of \$9,199 in service charges provided to General Revenue.¹⁵

The DBPR's reassignment of the staff who have been conducting both homeowner's association and condominium mediations to condominium mediations full-time as described in "Expenditures", below, will not result in additional revenues because unlike in the homeowner's association mediation program, the condominium mediation program does not charge for the cost of the mediation.

2. Expenditures:

The Department of Business and Professional Regulation will experience decreased workload as a result of no longer being required to perform homeowner association mediations. The department states, however, that it did not receive additional FTE's to perform homeowner's association mediations when the DBPR was originally assigned those responsibilities in FY 2004-05. The staff who have been conducting homeowner's association mediations also perform condominium mediations and the DBPR states they would return to those responsibilities full-time.

According to the Legislative Analysis Form provided by DBPR, "The change from mandatory mediation of homeowner's association disputes to voluntary mediation and the stated ability of an association to file the dispute in the court for injunctive relief instead of using the alternate pre-suit offer to participate in mediation may make it less likely that disputes will be mediated before filing in court." This may result in increased court filings. Currently, the department allows request for emergency injunctive relief to be filed in the courts prior to exhausting the mediation process on a case-by-case basis." During the roughly 12-month period from October 1, 2004 through November 22, 2005, the DBPR states that it received 1,007 petitions for mediation. Approximately 560 or 56% of these were settled and did not result in court filings.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may allow increased costs to purchasers or sellers of homes that are in a homeowner's association since the association may charge a fee for providing information requested by prospective purchasers. The fee cannot exceed \$150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

The bill provides for the recovery of costs and reasonable attorney's fees in regard to litigation between a condominium association and a lender with regard to whether consent has been improperly or unreasonably withheld for proposed amendments to declaration of condominium, articles of incorporation, or bylaws.

This bill amends s. 720.305, F.S., to provide that any member who prevails against an association and is awarded attorney's fees may also be awarded an amount sufficient to cover the member's pro-rata portion of those fees.

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¹⁵ The fiscal impact on state government was provided by Matilde Phillips of the Department of Business and Professional Regulation on April 3, 2006.

It is unclear whether this bill will increase or decrease the cost to homeowners and homeowner's associations relating to mediation of disputes. Under current law, a fee of \$200 is charged for filing to hear a dispute. Some such disputes are mediated by the Department of Business and Professional Regulation at a cost as is necessary to cover all DBPR expenses incurred in the mediation. From October 1, 2004, through November 22, 2005, for the 63 cases mediated by the DBPR, the average cost was \$783 per case. However, during this period of time, the DBPR referred the vast majority of cases (93%) to private mediators whose fees were paid by the parties. This bill eliminates the \$200 fee and the DBPR's provision of this service but provides for private mediation, if pursued, at a cost to be negotiated between the parties.

Additionally, according to the DBPR, the bill's requirement that private mediators for homeowner's association disputes be certified in circuit court mediation would mean that those mediators certified to mediate county court disputes would no longer be eligible to conduct homeowner's association disputes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article I, Section 10 of the Florida Constitution provides: "[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed." A statute contravenes the constitutional prohibition against impairment of contracts when it has the effect of rewriting antecedent contracts, that is, of changing the substantive rights of the parties to existing contracts." 17 18

The Supreme Court of Florida in Pomponio v. Claridge of Pompano Condominium, Inc., 378 So. 2d 774 (Fla. 1979) held that laws impairing contracts can be unconstitutional if they unreasonably and unnecessarily impair the contractual rights of citizens. 19 The Pomponio Court indicated that the "well-accepted principle in this state is that virtually no degree of contract impairment is tolerable in this state." Pomponio, 378 So. 2d at 780. When seeking to determine what level of impairment is constitutionally permissible, a court "must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy." Id.

In other words, "[t]his method requires a balancing of a person's interest not to have his contracts impaired with the state's interest in exercising its legitimate police power." U.S. Fidelity and Guar. Co. v. Department of Ins., 453 So. 2d 1355, 1360-61 (1984). What should be reviewed when considering this balancing test?

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¹⁶ Article 1, Section 10(1) of the U.S. Constitution provides: "No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts "

¹⁷ 10a Fla. Jur. s. 414, Constitutional Law.

¹⁸ The term impair is defined as "to make worse; to diminish in quantity, value, excellence, or strength; or to lessen in power or weaken." 10a Fla. Jur. s. 414, Constitutional Law.

19 The Florida Supreme Court has adopted the method of analysis from the United States Supreme Court in cases

involving the contract clause. Pomponio, 378 So. 2d at 780.

The United States Supreme Court recently outlined the main factors to be considered in applying this balancing test. The threshold inquiry is whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected. Total destruction of contractual expectations is not necessary for a finding of substantial impairment. On the other hand, state regulation that restricts a party to gains it reasonably expected from the contract does not necessarily constitute a substantial impairment. In determining the extent of the impairment, we are to consider whether the industry the complaining party has entered has been regulated in the past. The Court long ago observed: One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them. If the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation such as the remedying of a broad and general social or economic problem. Furthermore, since Blaisdell, the Court has indicated that the public purpose need not be addressed to an emergency or temporary situation. One legitimate state interest is the elimination of unforeseen windfall profits. The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests. Once a legitimate public purpose has been identified, the next inquiry is whether the adjustment of the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption. Unless the State itself is a contracting party, as is customary in reviewing economic and social regulation, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.

U.S. Fidelity and Guar. Co., 453 So.2d at 1360-61 (Fla. 1984) (internal citations and quotations omitted).

This bill amends s. 718.110, F.S., to provide that any provision in the declaration of condominium, articles of incorporation, or bylaws that requires consent or joinder of mortgagees to be obtained to pass an amendment to either of these documents "shall be void to the extent not limited to amendments materially affecting the rights or interests of the mortgagees". This bill could be interpreted as pertaining to all declarations, articles of incorporation, or bylaws that have consent or joinder requirements, existing before the effective date of the bill and after. This bill also provides that, for mortgages in existence prior to the effective date of this bill, associations can modify their declarations, articles of incorporation, or bylaws to require mortgagees to provide notice to the association of their contact information in order to be eligible to receive notices regarding proposed amendments.

A mortgage is a contract between a lender and a property owner. It is possible that a lender may have agreed to lend money to a condominium or community owner only if the lender would receive certain notifications and have the opportunity to object to amendments that could adversely affect the lender. To the extent that a lender relied on such provisions, this bill may affect the lender's ability to enforce such contract terms. If so, this bill may perhaps impair the obligation of a contract and this portion of the bill may not be enforced by a court.

There could also be some possible constitutional problems with the changes made in this bill to subsections (1) and (2) of s. 718.404, F.S. This bill amends this section to make these subsections apply retroactively. This could lead to contract clause violations if it were found to impair existing contracts.

B. RULE-MAKING AUTHORITY:

STORAGE NAME: DATE: h0391b.JA.doc 3/13/2006 None. However, the bill may require the repeal of Ch. 61B-82, F.A.C., containing the mediation rules of procedure.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 25, 2006, the Civil Justice Committee adopted 9 amendments to this bill. The amendments made the following revisions to the bill:

- Provides for the use of accounting principles as adopted by the Florida Board of Accountancy.
- Provides that the annual budget of homeowners' associations include the annual operating expenses and reserve accounts for capital expenditures and deferred maintenance.
- Provides that complete financial records of homeowners' associations be included with the documents that the developer must deliver at the time the members of the association are entitled to elect at least a majority of the board of directors.
- Provides for guarantees of common expenses when a guarantee is not included in the purchase contract or declaration. The amendment provides for the quarantee time period, maximum level of assessments, cash funding requirements during the guarantee, calculations of guarantor's final obligation, and for funding of expenses incurred in the production of non-assessment revenues.
- Provides that any member who prevails against an association and is awarded attorney's fees may also be awarded an amount sufficient to cover the member's pro-rata portion of those fees.
- Provides that in s. 718.404, F.S., regarding mixed-use condominiums, the following provisions are intended to apply retroactively as a remedial measure: (1) In mixed-use condominiums, the commercial unit owner cannot veto condominium documents; and (2) Where there are 50% residential units, the residential owners are entitled to vote for a majority of the seats on the board of administration.
- Removes section 8 of the bill regarding requirements for proposed revived declarations and other governing documents.
- Removes the phrase "not for profit" from s. 720.302(5), F.S., regarding the purpose and scope of ch. 720. F.S., so that it is in conformity with other revisions in the bill.
- Changes the phrase "100 members" to the more correct "100 parcels" in s. 720.303(2)(c)1., F.S.

The bill was then reported favorably with a committee substitute.

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²⁰ This change was necessary because the use of members could vary if you had several members per parcel or if every parcel only had one member. By using 100 parcels, there is a determined set number that will not vary. h0391b.JA.doc

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CHAMBER ACTION

The Civil Justice Committee recommends the following:

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Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to community associations; creating s. 712.11, F.S.; providing for the revival of certain declarations that have been extinguished; amending s. 718.110, F.S.; revising provisions relating to the amendment of declarations; providing legislative findings and a finding of compelling state interest; requiring a holder of a recorded mortgage on a condominium unit that requires the consent or joinder of a mortgagee to an amendment to provide certain information to a condominium association; providing definitions; providing criteria for consent to an amendment; requiring notice regarding proposed amendments to mortgagees; providing criteria for notification; requiring the association to conduct a diligent search to identify mortgagees; requiring the association's representative to execute an affidavit confirming that a diligent search was conducted; prohibiting the declaration of condominium, articles of incorporation, or bylaws from requiring the consent or

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joinder of more than a specified percent of the eligible mortgagees in connection with proposed amendments under certain conditions; providing criteria for enforcement; requiring mortgages seeking to disapprove a proposed amendment to provide certain information to the association; providing for the recovery of certain costs and attorney's fees; amending s. 718.404, F.S.; providing retroactive application of provisions relating to mixeduse condominiums; amending s. 720.302, F.S.; revising governing provisions relating to corporations that operate residential homeowners' associations; amending s. 720.303, F.S.; providing that special assessments may not be levied at a board meeting except under certain circumstances; revising provisions relating to the closed-circuit cable broadcast notice requirement; authorizing the association to charge a reasonable fee for providing good faith responses to certain requests for information by or on behalf of a prospective purchaser or lienholder; providing conditions for exemption from liability for providing such information; revising what must be included in an association's annual budget; providing for reserve accounts for capital expenditures and deferred maintenance; revising when the association must have its financial report completed and provided to members; repealing s. 720.303(2), F.S., as amended, relating to board meetings, to remove conflicting versions of that subsection; amending s. 720.305, F.S.; providing that, where a member is entitled to collect attorney's fees Page 2 of 41

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against the association, the member may also recover additional amounts as determined by the court; amending s. 720.306, F.S.; providing that certain mergers or consolidations of an association shall not be considered a material or adverse alteration of the proportionate voting interest appurtenant to a parcel; revising provisions relating to items that members and parcel owners may address at membership meetings; amending s. 720.307, F.S.; providing additional documents that the developer must deliver at the time the association members elect the board of directors; amending s. 720.308, F.S.; providing for the establishment of guarantees of common expenses shared by association members; amending s. 720.311, F.S.; revising provisions relating to dispute resolution; providing that the filing of any petition for arbitration or the serving of an offer for presuit mediation shall toll the applicable statute of limitations; providing that certain disputes between an association and a parcel owner shall be subject to presuit mediation; revising provisions to conform; providing that temporary injunctive relief may be sought in certain disputes subject to presuit mediation; authorizing the court to refer the parties to mediation under certain circumstances; requiring the aggrieved party to serve on the responding party a written offer to participate in presuit mediation; providing a form for such offer; providing that service of the offer is effected by the sending of such an offer in a certain manner; providing that the prevailing party in any Page 3 of 41

subsequent arbitration or litigation proceedings is entitled to seek recovery of all costs and attorney's fees incurred in the presuit mediation process; requiring the mediator or arbitrator to meet certain certification requirements; removing a requirement relating to development of an education program to increase awareness of the operation of homeowners' associations and the use of alternative dispute resolution techniques; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 712.11, Florida Statutes, is created to read:

712.11 Covenant revitalization.--A homeowners' association not otherwise subject to chapter 720 may use the procedures set forth in ss. 720.403-720.407 to revive covenants that have lapsed under the terms of this chapter.

Section 2. Effective October 1, 2006, subsection (11) of section 718.110, Florida Statutes, is amended to read:

 718.110 Amendment of declaration; correction of error or omission in declaration by circuit court.--

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(11) (a) Notwithstanding any provision to the contrary contained in this section, any provision in the declaration of condominium, articles of incorporation, or bylaws that requires declaration recorded after April 1, 1992, may not require the consent or joinder of some or all mortgagees of units or any other portion of the condominium property to or in amendments to

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the declaration of condominium, articles of incorporation, or 108 bylaws shall be void to the extent not, unless the requirement 109 is limited to amendments materially affecting the rights or 110 interests of the mortgagees, or as otherwise required by the 111 Federal National Mortgage Association or the Federal Home Loan 112 Mortgage Corporation, and any consent or joinder shall unless 113 the requirement provides that such consent may not be 114 unreasonably withheld. It shall be presumed that, except as to 115 those matters described in subsections (4) and (8) or other 116 issues materially affecting the mortgagee's security interest in 117 the property, amendments to the declaration of condominium, 118 articles of incorporation, or bylaws do not materially affect 119 the rights or interests of mortgagees. In the event mortgagee 120 consent is provided other than by properly recorded joinder, 121 such consent shall be evidenced by affidavit of the association 122 recorded in the public records of the county where the 123 declaration of condominium, articles of incorporation, or bylaws 124 are is recorded. 125

(b) The Legislature finds that the procurement of mortgagee consent or joinder to amendments that do not materially affect the rights or interests of mortgagees is an unreasonable and substantial logistical and financial burden on the unit owners and condominium associations and that there is a compelling state interest in enabling the members of a condominium association to approve amendments. Accordingly, any holder of a recorded mortgage on a condominium unit or any other portion of a condominium, which mortgage is first recorded after October 1, 2006, and for which the declaration of condominium,

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articles of incorporation, or bylaws require the consent or 136 joinder of a mortgagee to an amendment, must provide written 137 notice by certified mail to the association of the address at 138 which the mortgagee may be contacted in regard to any proposed 139 amendments. The association shall maintain the names and 140 addresses of such mortgagees in a registry of mortgagees, which 141 the association shall utilize when sending a request for such 142 consent or joinder. A request for consent or joinder must be 143 mailed to a mortgagee by certified mail, return receipt 144 requested, to the address provided by the mortgagee and retained 145 in the registry of mortgagees. As used in this subsection, 146 "certified mail" means either certified or registered mail, 147 return receipt requested. Consent to an amendment shall be 148 deemed to have been given by any holder of a mortgage that is 149 first recorded after October 1, 2006, and who fails to provide 150 the required written notice and contact information. Also, any 151 mortgagee who fails to respond by certified mail within 30 days 152 after the date the association mails a request for consent or 153 joinder shall be deemed to have consented to the proposed 154 155 amendment.

(c) As to mortgages in existence as of October 1, 2006, in those condominiums where the consent or joinder of such mortgagees is required in connection with amendments to the governing documents, and where such mortgagees are not otherwise required by the existing declaration of condominium, articles of incorporation, or bylaws to provide notice to the association of their contact information in order to be eligible to receive notices regarding proposed amendments, those condominium

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associations that wish to modify provisions in the declaration of condominium, articles of incorporation, or bylaws that require the consent or joinder of mortgagees must notify all mortgagees who hold mortgages on units within the condominium or other portions of the condominium property of the need to provide the same contact information as required in paragraph (b). Any mortgagee who does not provide contact information as required will be deemed to have consented to all future proposed amendments. Further, once the proper address for notifying existing mortgagees has been obtained in the manner provided for in this subsection, failure of any mortgagee to respond to a request for the consent or joinder to a proposed amendment within 30 days after the date that such request is sent to the mortgagee by certified mail shall be deemed to have consented to such amendment. In order to properly notify holders of existing mortgages:

1. The condominium association must first conduct a diligent search to identify all existing mortgagees and an address for the required notice to be sent to each mortgagee. Service of the notice shall be on the mortgagee's registered agent based upon the information available from the Secretary of State. Where there is no registered agent, the notice shall be sent to the address in the original recorded mortgage unless there is a different address in a more recently recorded assignment or modification instrument or in the records maintained by the condominium association. All notices must be sent by certified mail and must advise the mortgagee that if he or she fails to provide the contact information requested within

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192 30 days after the date of mailing of the certified letter from

the association, such mortgagee shall be deemed to have

consented to the proposed amendment.

- 2. An affidavit must be executed by a representative of the condominium association confirming that a diligent search has been conducted to identify all outstanding mortgages on the condominium in the manner provided for in subparagraph 1. and summarizing the steps that were taken in connection with such diligent search and the notification of all mortgagees, and such affidavit shall be placed in the association's minute book as an attachment to the minutes of the meeting in which the board of directors considers such affidavit.
- (d) After October 1, 2006, no new declaration of condominium, articles of incorporation, or bylaws may require the consent or joinder of more than 51 percent of the eligible mortgagees in connection with any proposed amendment unless a higher percentage is required in order to comply with the requirements of the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation. Any new declaration of condominium, articles of incorporation, or bylaws must also require mortgagees to provide to the condominium association the address to which notices may be sent, as provided for in paragraph (b), in order for such mortgagees to have the right to be contacted in connection with any proposed amendment.
- (e) A provision requiring the consent or joinder of some or all holders of mortgages on units or other portions of the condominium property to any proposed amendment shall be enforceable only by mortgagees of record as of the date an

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amendment is recorded in the public records and only by those
mortgagees who have complied with the requirements of paragraph
(b) or paragraph (c). Any amendment adopted without the required
consent of a mortgagee shall be deemed voidable by any mortgagee
who was entitled to notice and the opportunity to consent, and
actions to void such amendments shall be subject to the statute
of limitations applicable to actions founded upon written
instruments, which statute shall commence to run as of the date
such amendment is recorded in the public records and, for
amendments recorded prior to October 1, 2006, shall commence on
October 1, 2006.

- (f) In order to establish that he or she is not unreasonably withholding consent, any mortgagee who seeks to disapprove of a proposed amendment by withholding his or her consent or joinder must include in his or her reply to the condominium association's request for consent or joinder a statement of the specific reasons the proposed amendment is claimed to materially and adversely affect the rights and interests of such mortgagee.
- (g) In connection with any litigation between a condominium association and a lender with regard to whether consent has been improperly or unreasonably withheld, the prevailing party shall be entitled to recover his or her costs and reasonable attorney's fees.
- Section 3. Subsections (1) and (2) of section 718.404, Florida Statutes, are amended to read:

718.404 Mixed-use condominiums.--When a condominium consists of both residential and commercial units, the following provisions shall apply:

- (1) The condominium documents shall not provide that the owner of any commercial unit shall have the authority to veto amendments to the declaration, articles of incorporation, bylaws, or rules or regulations of the association. This subsection shall apply retroactively as a remedial measure.
- (2) Subject to s. 718.301, where the number of residential units in the condominium equals or exceeds 50 percent of the total units operated by the association, owners of the residential units shall be entitled to vote for a majority of the seats on the board of administration. This subsection shall apply retroactively as a remedial measure.
- Section 4. Subsections (4) and (5) of section 720.302, Florida Statutes, are amended to read:

720.302 Purposes, scope, and application .--

- (4) This chapter does not apply to any association that is subject to regulation under chapter 718, chapter 719, or chapter 721; or to any nonmandatory association formed under chapter 723, except to the extent that a provision of chapter 718, chapter 719, or chapter 721 is expressly incorporated into this chapter for the purpose of regulating homeowners' associations.
- (5) Unless expressly stated to the contrary, corporations not for profit that operate residential homeowners' associations in this state shall be governed by and subject to chapter 607, if the association was incorporated thereunder, or to chapter

617, if the association was incorporated thereunder, and this chapter. This subsection is intended to clarify existing law.

Section 5. Subsections (2), (6), and (7) of section 720.303, Florida Statutes, as amended by section 18 of chapter 2004-345 and section 135 of chapter 2005-2, Laws of Florida, are amended, and paragraphs (d) and (e) are added to subsection (5) of that section, to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.--

(2) BOARD MEETINGS. --

- (a) A meeting of the board of directors of an association occurs whenever a quorum of the board gathers to conduct association business. All meetings of the board must be open to all members except for meetings between the board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. The provisions of this subsection shall also apply to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of association funds and to meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.
- (b) Members have the right to attend all meetings of the board and to speak on any matter placed on the agenda by petition of the voting interests for at least 3 minutes. The association may adopt written reasonable rules expanding the Page 11 of 41

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right of members to speak and governing the frequency, duration, and other manner of member statements, which rules must be consistent with this paragraph and may include a sign-up sheet for members wishing to speak. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the members is inapplicable to meetings between the board or a committee and the association's attorney, with respect to meetings of the board held for the purpose of discussing personnel matters.

- (c) The bylaws shall provide for giving notice to parcel owners and members of all board meetings and, if they do not do so, shall be deemed to provide the following:
- Notices of all board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. Notwithstanding this general notice requirement, for communities with more than 100 parcels members, the bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of notice, provision of a schedule of board meetings, or the conspicuous posting and repeated broadcasting of the notice on a closedcircuit cable television system serving the homeowners' association. However, if broadcast notice is used in lieu of a notice posted physically in the community, the notice must be broadcast at least four times every broadcast hour of each day Page 12 of 41

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that a posted notice is otherwise required. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. The bylaws or amended bylaws may provide for giving notice by electronic transmission in a manner authorized by law for meetings of the board of directors, committee meetings requiring notice under this section, and annual and special meetings of the members; however, a member must consent in writing to receiving notice by electronic transmission.

- 2. A special Am assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that special assessments will be considered and the nature of the special assessments. Written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting.
- 3. Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This subsection also applies to the meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of association funds, and to any body vested with the power to approve or disapprove architectural decisions with respect to a specific

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parcel of residential property owned by a member of the community.

- (d) If 20 percent of the total voting interests petition the board to address an item of business, the board shall at its next regular board meeting or at a special meeting of the board, but not later than 60 days after the receipt of the petition, take the petitioned item up on an agenda. The board shall give all members notice of the meeting at which the petitioned item shall be addressed in accordance with the 14-day notice requirement pursuant to subparagraph (c)2. Each member shall have the right to speak for at least 3 minutes on each matter placed on the agenda by petition, provided that the member signs the sign-up sheet, if one is provided, or submits a written request to speak prior to the meeting. Other than addressing the petitioned item at the meeting, the board is not obligated to take any other action requested by the petition.
- (5) INSPECTION AND COPYING OF RECORDS.--The official records shall be maintained within the state and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within 10 business days after receipt of a written request for access. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages.

- (d) The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the residential subdivision or the association other than information or documents required by this chapter to be made available or disclosed. The association or its authorized agent may charge a reasonable fee to the prospective purchaser or lienholder or the current parcel owner or member for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, if the fee does not exceed \$150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.
- (e) An association and its authorized agent are not liable for providing such information in good faith pursuant to a written request if the person providing the information includes a written statement in substantially the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."
 - (6) BUDGETS.--

(a) The association shall prepare an annual budget that sets out the annual operating expenses. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges for recreational amenities, whether owned by the association, the developer, or another person. The association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to Page 15 of 41

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the member. The copy must be provided to the member within the time limits set forth in subsection (5).

In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but are not limited to, accounts for roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000. The amount to be reserved shall be computed by means of a formula that is based upon the estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to an adopted budget in which the members of an association have determined, by a majority vote at a duly called meeting of the association, to provide no reserves or fewer reserves than required by this subsection. However, prior to turnover of control of an association by a developer to unit owners, the developer may vote to waive the reserves or reduce the funding of reserves for the first 2 fiscal years of the association's operation, beginning with the fiscal year in which the initial declaration is recorded, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association.

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If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves as included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

- (c) Funding formulas for reserves required by this subsection shall be based on either a separate analysis of each of the required assets or a pooled analysis of two or more of the required assets.
- 1. If the association maintains separate reserve accounts for each of the required assets, the amount of the contribution to each reserve account shall be the sum of the following two calculations:
- a. The total amount necessary, if any, to bring a negative component balance to zero.
- b. The total estimated deferred maintenance expense or estimated replacement cost of the reserve component less the estimated balance of the reserve component as of the beginning of the period for which the budget will be in effect. The remainder, if greater than zero, shall be divided by the estimated remaining useful life of the component.

The formula may be adjusted each year for changes in estimates and deferred maintenance performed during the year and may consider factors such as inflation and earnings on invested funds.

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2. If the association maintains a pooled account of two or
more of the required reserve assets, the amount of the
contribution to the pooled reserve account as disclosed in the
proposed budget shall be not less than that required to ensure
that the balance on hand at the beginning of the period for
which the budget will go into effect plus the projected annual
cash inflows over the remaining estimated useful lives of all of
the assets that make up the reserve pool are equal to or greater
than the projected annual cash outflows over the remaining
estimated useful lives of all of the assets that make up the
reserve pool, based on the current reserve analysis. The
projected annual cash inflows may include estimated earnings
from investment of principal. The reserve funding formula shall
not include any type of balloon payments.
(d) Reserve funds and any interest accruing thereon shall
remain in the reserve account or accounts and shall be used only
for authorized reserve expenditures unless their use for other
purposes is approved in advance by a majority vote at a duly
called meeting of the association. Prior to turnover of control
of an association by a developer to unit owners, the developer-
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- controlled association shall not vote to use reserves for
- purposes other than that for which they were intended without
- the approval of a majority of all nondeveloper voting interests
- voting in person or by limited proxy at a duly called meeting of
- the association.

- FINANCIAL REPORTING. -- Within 90 days after the end of (7) the fiscal year, or annually on a date provided in the bylaws,
- the association shall prepare and complete, or contract for the

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preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall prepare an annual financial report within 60 days after the close of the fiscal year. The association shall, within the time limits set forth in subsection (5), provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. Financial reports shall be prepared as follows:

- (a) An association that meets the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements in accordance with generally accepted accounting principles as adopted by the Florida Board of Accountancy. The financial statements shall be based upon the association's total annual revenues, as follows:
- 1. An association with total annual revenues of \$100,000 or more, but less than \$200,000, shall prepare compiled financial statements.
- 2. An association with total annual revenues of at least \$200,000, but less than \$400,000, shall prepare reviewed financial statements.
- 3. An association with total annual revenues of \$400,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than \$100,000 shall prepare a report of cash receipts and expenditures.

- 2. An association in a community of fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a) unless the governing documents provide otherwise.
- 3. A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.
- (c) If 20 percent of the parcel owners petition the board for a level of financial reporting higher than that required by this section, the association shall duly notice and hold a meeting of members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the parcel owners, the association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the governing documents, and shall Page 20 of 41

provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

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- 1. Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures;
- Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements; or
- 3. Audited financial statements if the association is otherwise required to prepare reviewed financial statements.
- (d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:
- A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;
- 2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
- 3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.
- Section 6. Subsection (2) of section 720.303, Florida

 Statutes, as amended by section 2 of chapter 2004-345 and section 15 of chapter 2004-353, Laws of Florida, is repealed.
- Section 7. Subsection (1) of section 720.305, Florida Statutes, is amended to read:
- 720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights; failure to Page 21 of 41

fill sufficient number of vacancies on board of directors to constitute a quorum; appointment of receiver upon petition of any member.--

- (1) Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter, the governing documents of the community, and the rules of the association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any member against:
 - (a) The association;
 - (b) A member;

- (c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and
- (d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney's fees, may recover additional amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any other available right or remedy.

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- Section 8. Paragraph (c) of subsection (1) and subsection (6) of section 720.306, Florida Statutes, are amended to read: 720.306 Meetings of members; voting and election procedures; amendments.--
 - (1) QUORUM; AMENDMENTS. --
- (c) Unless otherwise provided in the governing documents as originally recorded or permitted by this chapter or chapter 617, an amendment may not materially and adversely alter the proportionate voting interest appurtenant to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment. For purposes of this section, a change in quorum requirements is not an alteration of voting interests. The merger or consolidation of one or more associations under a plan of merger or consolidation under chapter 607 or chapter 617 shall not be considered a material or adverse alteration of the proportionate voting interest appurtenant to a parcel.
- (6) RIGHT TO SPEAK.--Members and parcel owners have the right to attend all membership meetings and to speak at any meeting with reference to all items opened for discussion or included on the agenda. Notwithstanding any provision to the contrary in the governing documents or any rules adopted by the board or by the membership, a member and a parcel owner have the right to speak for at least 3 minutes on any agenda item, provided that the member or parcel owner submits a written request to speak prior to the meeting. The association may adopt Page 23 of 41

written reasonable rules governing the frequency, duration, and other manner of member and parcel owner statements, which rules must be consistent with this subsection.

- Section 9. Paragraph (t) is added to subsection (3) of section 720.307, Florida Statutes, to read:
- 720.307 Transition of association control in a community.--With respect to homeowners' associations:

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- (3) At the time the members are entitled to elect at least a majority of the board of directors of the homeowners' association, the developer shall, at the developer's expense, within no more than 90 days deliver the following documents to the board:
- (t) The financial records, including financial statements 645 of the association, and source documents from the incorporation 646 of the association through the date of turnover. The records 647 shall be audited by an independent certified public accountant 648 for the period from the incorporation of the association or from 649 the period covered by the last audit, if an audit has been 650 performed for each fiscal year since incorporation. All 651 financial statements shall be prepared in accordance with 652 qenerally accepted accounting principles and shall be audited in 653 accordance with generally accepted auditing standards, as 654 prescribed by the Florida Board of Accountancy, pursuant to 655 chapter 473. The certified public accountant performing the 656 657 audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid 658 invoices to determine if expenditures were for association 659 purposes and the billings, cash receipts, and related records to 660

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determine that the developer was charged and paid the proper amounts of assessments.

Section 10. Section 720.308, Florida Statutes, is amended to read:

720.308 Assessments and charges.--

- (1) ASSESSMENTS.--For any community created after October 1, 1995, the governing documents must describe the manner in which expenses are shared and specify the member's proportional share thereof. Assessments levied pursuant to the annual budget or special assessment must be in the member's proportional share of expenses as described in the governing document, which share may be different among classes of parcels based upon the state of development thereof, levels of services received by the applicable members, or other relevant factors. While the developer is in control of the homeowners' association, it may be excused from payment of its share of the operating expenses and assessments related to its parcels for any period of time for which the developer has, in the declaration, obligated itself to pay any operating expenses incurred that exceed the assessments receivable from other members and other income of the association. This section does not apply to an association, no matter when created, if the association is created in a community that is included in an effective development-ofregional-impact development order as of the effective date of this act, together with any approved modifications thereto.
 - (2) GUARANTEES OF COMMON EXPENSES. --
- (a) Establishment of guarantee.--If a guarantee is not included in the purchase contracts, declaration, or prospectus,

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any agreement establishing a guarantee shall only be effective either upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association or by agreement in writing without a meeting if provided in the bylaws. Such guarantee shall meet the requirements of this section.

- (b) Guarantee period.--The period of time for the guarantee shall be indicated by a specific beginning and ending date or event.
- 1. The ending date or event shall be the same for all of the members of a homeowners' association, including members in different phases of homeowners' associations.
- 2. The guarantee may provide for different intervals of time during a guarantee period with different dollar amounts for each such interval.
- (c) Guarantee extension.--The guarantee may provide that after the initial stated period, the developer has an option to extend the guarantee for one or more additional stated periods.

 The extension of a guarantee is limited to extending the ending date or event; therefore, the developer does not have the option of changing the level of assessments guaranteed.
- amount of the guarantee shall be an exact dollar amount for each parcel identified in the declaration. Regardless of the stated dollar amount of the guarantee, assessments charged to a member shall not exceed the maximum obligation of the member based on the total amount of the adopted budget and the member's proportionate ownership share of the common elements.

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(4) CASH FUNDING REQUIREMENTS DURING GUARANTEE.--The cash payments required from the guarantor during the guarantee period shall be determined as follows:

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- (a) If at any time during the guarantee period the funds collected from member assessments at the guaranteed level and other revenues collected by the association are not sufficient to provide payment, on a timely basis, of all common expenses, including the full funding of the reserves unless properly waived, the guarantor shall advance sufficient cash to the association at the time such payments are due.
- Expenses incurred in the production of nonassessment revenues, not in excess of the nonassessment revenues, shall not be included in the common expenses. If the expenses attributable to nonassessment revenues exceed nonassessment revenues, only the excess expenses must be funded by the guarantor. For example, if the association operates a rental program in which rental expenses exceed rental revenues, the guarantor shall fund the rental expenses in excess of the rental revenues. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment, such expense shall not be charged to the guarantor, and the net investment income shall be retained by the association. Each such nonassessment revenue-generating activity shall be considered separately. Capital contributions collected from members are not revenues and shall not be used to pay common expenses.
- (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The guarantor's total financial obligation to the association at the Page 27 of 41

end of the guarantee period shall be determined on the accrual basis using the following formula:

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- (a) The guarantor shall fund the total common expenses incurred during the guarantee period, including the full funding of the reserves unless properly waived; less
- (b) The total regular periodic assessments earned by the association from the members other than the guarantor during the guarantee period regardless of whether the actual level charged was less than the maximum guaranteed amount.
- (6) EXPENSES. -- Expenses incurred in the production of nonassessment revenues, not in excess of the nonassessment revenues, shall not be included in the common expenses. If the expenses attributable to nonassessment revenues exceed nonassessment revenues, only the excess expenses must be funded by the quarantor. For example, if the association operates a rental program in which rental expenses exceed rental revenues, the quarantor shall fund the rental expenses in excess of the rental revenues. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment, such expense shall not be charged to the guarantor, and the net investment income shall be retained by the association. Each such nonassessment revenuegenerating activity shall be considered separately. Capital contributions collected from members are not revenues and shall not be used to pay common expenses.

770 Section 11. Section 720.311, Florida Statutes, is amended 771 to read:

720.311 Dispute resolution.--

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(1) The Legislature finds that alternative dispute
resolution has made progress in reducing court dockets and
trials and in offering a more efficient, cost-effective option
to litigation. The filing of any petition for mediation or
arbitration or the serving of an offer for presuit mediation as
provided for in this section shall toll the applicable statute
of limitations. Any recall dispute filed with the department
pursuant to s. 720.303(10) shall be conducted by the department
in accordance with the provisions of ss. 718.112(2)(j) and
718.1255 and the rules adopted by the division. In addition, the
department shall conduct mandatory binding arbitration of
election disputes between a member and an association pursuant
to s. 718.1255 and rules adopted by the division. Neither
election disputes nor recall disputes are eligible for presuit
mediation; these disputes shall be arbitrated by the department.
At the conclusion of the proceeding, the department shall charge
the parties a fee in an amount adequate to cover all costs and
expenses incurred by the department in conducting the
proceeding. Initially, the petitioner shall remit a filing fee
of at least \$200 to the department. The fees paid to the
department shall become a recoverable cost in the arbitration
proceeding, and the prevailing party in an arbitration
proceeding shall recover its reasonable costs and attorney's
fees in an amount found reasonable by the arbitrator. The
department shall adopt rules to effectuate the purposes of this
section.

(2)(a) Disputes between an association and a parcel owner regarding use of or changes to the parcel or the common areas $\hbox{ Page 29 of 41}$

801	and other covenant enforcement disputes, disputes regarding
802	amendments to the association documents, disputes regarding
803	meetings of the board and committees appointed by the board,
804	membership meetings not including election meetings, and access
805	to the official records of the association shall be the subject
806	of an offer filed with the department for presuit mandatory
807	mediation served by an aggrieved party before the dispute is
808	filed in court. Presuit mediation proceedings must be conducted
809	in accordance with the applicable Florida Rules of Civil
810	Procedure, and these proceedings are privileged and confidential
811	to the same extent as court-ordered mediation. Disputes subject
812	to presuit mediation under this section shall not include the
813	collection of any assessment, fine, or other financial
814	obligation, including attorney's fees and costs, claimed to be
815	due or any action to enforce a prior mediation settlement
816	agreement between the parties. Also, in any dispute subject to
817	presuit mediation under this section where emergency relief is
818	required, a motion for temporary injunctive relief may be filed
819	with the court without first complying with the presuit
820	mediation requirements of this section. After any issues
821	regarding emergency or temporary relief are resolved, the court
822	may either refer the parties to a mediation program administered
823	by the courts or require mediation under this section. An
824	arbitrator or judge may not consider any information or evidence
825	arising from the presuit mediation proceeding except in a
826	proceeding to impose sanctions for failure to attend a presuit
827	mediation session or with the parties' agreement in a proceeding
828	seeking to enforce the agreement. Persons who are not parties to

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CS the dispute may not attend the presuit mediation conference 829 without the consent of all parties, except for counsel for the 830 parties and a corporate representative designated by the 831 association. When mediation is attended by a quorum of the 832 board, such mediation is not a board meeting for purposes of 833 notice and participation set forth in s. 720.303. An aggrieved 834 party shall serve on the responding party a written offer to 835 participate in presuit mediation in substantially the following 836 837 form: 838 STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION 839 840 , hereby 841 The alleged aggrieved party, offers to , as the responding party, 842 to enter into presuit mediation in connection with the 843 following dispute, which by statute is of a type that 844 is subject to presuit mediation: 845 846 (List specific nature of the dispute or disputes to be 847 mediated and the authority supporting a finding of a 848 849 violation as to each dispute.) 850 Pursuant to section 720.311, Florida Statutes, this 851 offer to resolve the dispute through presuit mediation 852 is required before a lawsuit can be filed concerning 853 the dispute. Pursuant to the statute, the aggrieved 854 party is hereby offering to engage in presuit 855 mediation with a neutral third-party mediator in order 856 Page 31 of 41

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to attempt to resolve this dispute without court 857 858 action, and the aggrieved party demands that you likewise agree to this process. If you fail to agree 859 to presuit mediation, or if you agree and later fail 860 to follow through with your agreement to mediate, suit 861 may be brought against you without further warning. 862 863 The process of mediation involves a supervised 864 negotiation process in which a trained, neutral third-865 party mediator meets with both parties and assists 866 them in exploring possible opportunities for resolving 867 part or all of the dispute. The mediation process is a 868 voluntary one. By agreeing to participate in presuit 869 mediation, you are not bound in any way to change your 870 position or to enter into any type of agreement. 871 Furthermore, the mediator has no authority to make any 872 decisions in this matter or to determine who is right 873 or wrong and merely acts as a facilitator to ensure 874 that each party understands the position of the other 875 party and that all reasonable settlement options are 876 fully explored. 877 878 If an agreement is reached, it shall be reduced to 879 writing and becomes a binding and enforceable 880 commitment of the parties. A resolution of one or more 881 disputes in this fashion avoids the need to litigate 882 these issues in court. The failure to reach an 883 agreement, or the failure of a party to participate in 884

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the process, results in the mediator's declaring an impasse in the mediation, after which the aggrieved party may proceed to court on all outstanding, unsettled disputes.

The aggrieved party has selected and hereby lists three certified mediators who we believe to be neut:

three certified mediators who we believe to be neutral and qualified to mediate the dispute. You have the right to select any one of these mediators. The fact that one party may be familiar with one or more of the listed mediators does not mean that the mediator cannot act as a neutral and impartial facilitator. Any mediator who cannot act in this capacity ethically must decline to accept engagement. The mediators that we suggest, and their current hourly rates, are as follows:

(List the names, addresses, telephone numbers, and hourly rates of the mediators. Other pertinent information about the background of the mediators may be included as an attachment.)

 You may contact the offices of these mediators to confirm that the listed mediators will be neutral and will not show any favoritism toward either party. The names of certified mediators may be found through the office of the clerk of the circuit court for this circuit.

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913 If you agree to participate in the presuit mediation 914 process, the statute requires that each party is to 915 pay one-half of the costs and fees involved in the 916 presuit mediation process unless otherwise agreed by 917 all parties. An average mediation may require 3 to 4 918 hours of the mediator's time, including some 919 preparation time, and each party would need to pay 920 one-half of the mediator's fees as well as his or her 921 own attorney's fees if he or she chooses to employ an 922 attorney in connection with the mediation. However, 923 use of an attorney is not required and is at the 924 option of each party. The mediator may require the 925 advance payment of some or all of the anticipated 926 fees. The aggrieved party hereby agrees to pay or 927 prepay one-half of the mediator's estimated fees and 928 to forward this amount or such other reasonable 929 advance deposits as the mediator may require for this 930 purpose. Any funds deposited will be returned to you 931 if these are in excess of your share of the fees 932 933 incurred. 934 If you agree to participate in presuit mediation in 935 order to attempt to resolve the dispute and thereby 936 avoid further legal action, please sign below and 937 clearly indicate which mediator is acceptable to you. 938 We will then ask the mediator to schedule a mutually 939

convenient time and place for the mediation conference

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to be held. The mediation conference must be held

within 90 days after the date of this letter unless 942 943 extended by mutual written agreement. In the event that you fail to respond within 20 days after the date 944 of this letter, or if you fail to agree to at least 945 one of the mediators that we have suggested and to pay 946 or prepay to the mediator one-half of the costs 947 involved, the aggrieved party will be authorized to 948 proceed with the filing of a lawsuit against you 949 without further notice and may seek an award of 950 attorney's fees or costs incurred in attempting to 951

Should you wish, you may also elect to waive presuit
mediation so that this matter may proceed directly to
court.

Therefore, please give this matter your immediate attention. By law, your response must be mailed by certified mail, return receipt requested, with an additional copy being sent by regular first-class mail to the address shown on this offer.

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2006 (CORRECTED COPY) HB 391 CS RESPONDING PARTY: CHOOSE ONLY ONE OF THE TWO OPTIONS 967 BELOW. YOUR SIGNATURE INDICATES YOUR AGREEMENT TO THAT 968 CHOICE. 969 970 AGREEMENT TO MEDIATE 971 972 The undersigned hereby agrees to participate in 973 presuit mediation and agrees to the following mediator 974 or mediators as acceptable to mediate this dispute: 975 976 (List acceptable mediator or mediators.) 977 978 I/we further agree to pay or prepay one-half of the 979 mediator's fees and to forward such advance deposits 980 as the mediator may require for this purpose. 981 982 983 Signature of responding party #1 984 985 986 Signature of responding party #2 (if applicable) (if 987 property is owned by more than one person, all owners 988 must sign) 989 990 WAIVER OF MEDIATION 991 992 The undersigned hereby waives the right to participate 993 in presuit mediation of the dispute listed above and 994 Page 36 of 41

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(CORRECTED COPY) HB 391 CS agrees to allow the aggrieved party to proceed in 995 996 court on such matters. 997 998 Signature of responding party #1 999 1000 1001 Signature of responding party #2 (if applicable)(if 1002 property is owned by more than one person, all owners 1003 1004 must sign) 1005 (b) Service of the statutory offer to participate in 1006 presuit mediation shall be effected by sending a letter in 1007 substantial conformity with the above form by certified mail, 1008 return receipt requested, with an additional copy being sent by 1009 regular first-class mail, to the address of the responding party 1010 as it last appears on the books and records of the association. 1011 1012 The responding party shall have 20 days from the date of the mailing of the statutory offer to serve a response to the 1013 aggrieved party in writing. The response shall be served by 1014 certified mail, return receipt requested, with an additional 1015 copy being sent by regular first-class mail, to the address 1016 shown on the statutory offer. In the alternative, the responding 1017 party may waive mediation in writing. Notwithstanding the 1018 foregoing, once the parties have agreed on a mediator, the 1019 mediator may reschedule the mediation for a date and time 1020

mutually convenient to the parties. The department shall conduct

the proceedings through the use of department mediators or refer

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the disputes to private mediators who have been duly certified 1023 by the department as provided in paragraph (c). The parties 1024 shall share the costs of presuit mediation equally, including 1025 the fee charged by the mediator, if any, unless the parties 1026 agree otherwise, and the mediator may require advance payment of 1027 its reasonable fees and costs. The failure of any party to 1028 respond to a demand or response, to agree upon a mediator, to 1029 make payment of fees and costs within the time established by 1030 the mediator, or to appear for a scheduled mediation session 1031 shall operate as an impasse in the presuit mediation by such 1032 1033 party, entitling the other party to proceed in court and to seek an award of the costs and fees associated with the mediation. 1034 Additionally, if any presuit mediation session cannot be 1035 scheduled and conducted within 90 days after the offer to 1036 participate in mediation was filed, an impasse shall be deemed 1037 to have occurred unless both parties agree to extend this 1038 deadline. If a department mediator is used, the department may 1039 charge such fee as is necessary to pay expenses of the 1040 mediation, including, but not limited to, the salary and 1041 benefits of the mediator and any travel expenses incurred. The 1042 petitioner shall initially file with the department upon filing 1043 the disputes, a filing fee of \$200, which shall be used to 1044 defray the costs of the mediation. At the conclusion of the 1045 mediation, the department shall charge to the parties, to be 1046 shared equally unless otherwise agreed by the parties, such 1047 further fees as are necessary to fully reimburse the department 1048 for all expenses incurred in the mediation. 1049

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1050	(c) (b) If presuit mediation as described in paragraph (a)
1051	is not successful in resolving all issues between the parties,
1052	the parties may file the unresolved dispute in a court of
1053	competent jurisdiction or elect to enter into binding or
1054	nonbinding arbitration pursuant to the procedures set forth in
1055	s. 718.1255 and rules adopted by the division, with the
1056	arbitration proceeding to be conducted by a department
1057	arbitrator or by a private arbitrator certified by the
1058	department. If all parties do not agree to arbitration
1059	proceedings following an unsuccessful mediation, any party may
1060	file the dispute in court. A final order resulting from
1061	nonbinding arbitration is final and enforceable in the courts if
1062	a complaint for trial de novo is not filed in a court of
1063	competent jurisdiction within 30 days after entry of the order.
1064	As to any issue or dispute that is not resolved at presuit
1065	mediation, and as to any issue that is settled at presuit
1066	mediation but is thereafter subject to an action seeking
1067	enforcement of the mediation settlement, the prevailing party in
1068	any subsequent arbitration or litigation proceeding shall be
1069	entitled to seek recovery of all costs and attorney's fees
1070	incurred in the presuit mediation process.
1071	(d) (c) The department shall develop a certification and
1072	training program for private mediators and private arbitrators
1073	which shall emphasize experience and expertise in the area of
1074	the operation of community associations. A mediator or
1075	arbitrator shall be certified to conduct mediation or
1076	arbitration under this section by the department only if he or
1077	she has been certified as a circuit court civil mediator or

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arbitrator, respectively, pursuant to the requirements established attended at least 20 hours of training in mediation or arbitration, as appropriate, and only if the applicant has mediated or arbitrated at least 10 disputes involving community associations within 5 years prior to the date of the application, or has mediated or arbitrated 10 disputes in any area within 5 years prior to the date of application and has completed 20 hours of training in community association disputes. In order to be certified by the department, any mediator must also be certified by the Florida Supreme Court. The department may conduct the training and certification program within the department or may contract with an outside vendor to perform the training or certification. The expenses of operating the training and certification and training program shall be paid by the moneys and filing fees generated by the arbitration of recall and election disputes and by the mediation of those disputes referred to in this subsection and by the training fees.

(e) (d) The presuit mediation procedures provided by this subsection may be used by a Florida corporation responsible for the operation of a community in which the voting members are parcel owners or their representatives, in which membership in the corporation is not a mandatory condition of parcel ownership, or which is not authorized to impose an assessment that may become a lien on the parcel.

(3) The department shall develop an education program to assist homeowners, associations, board members, and managers in understanding and increasing awareness of the operation of

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homeowners' associations pursuant to this chapter and in understanding the use of alternative dispute resolution techniques in resolving disputes between parcel owners and associations or between owners. Such education program may include the development of pamphlets and other written instructional guides, the holding of classes and meetings by department employees or outside vendors, as the department determines, and the creation and maintenance of a website containing instructional materials. The expenses of operating the education program shall be initially paid by the moneys and filing fees generated by the arbitration of recall and election disputes and by the mediation of those disputes referred to in this subsection.

Section 12. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2006.

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Bill No. 391 CS

	COUNCIL/COMMITTEE ACTION
	ADOPTED (Y/N)
	ADOPTED AS AMENDED (Y/N)
	ADOPTED W/O OBJECTION (Y/N)
	FAILED TO ADOPT (Y/N)
	WITHDRAWN (Y/N)
	OTHER
1	Council/Committee hearing bill: Judiciary Appropriations
2	Representative(s) Domino offered the following:
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4	Amendment (with title amendment)
5	Remove everything after the enacting clause and insert:
6	Section 1. Section 712.11, Florida Statutes, is created to
7	read:
8	712.11 Covenant revitalization A homeowners' association
9	not otherwise subject to chapter 720 may use the procedures set
10	forth in ss. 720.403-720.407 to revive covenants that have
11	lapsed under the terms of this chapter.
12	Section 2. Effective October 1, 2006, subsection (11) of
13	section 718.110, Florida Statutes, is amended to read:
14	718.110 Amendment of declaration; correction of error or
15	omission in declaration by circuit court
16	(11) The Legislature finds that the procurement of
17	mortgagee consent to amendments that do not affect the rights or
18	interests of mortgagees is an unreasonable and substantial
19	logistical and financial burden on the unit owners and that
20	there is a compelling state interest in enabling the members in
21	a condominium association to approve amendments to the
22	condominium documents through legal means. Accordingly, and

notwithstanding any provision to the contrary contained in this section:

- (a) As to any mortgage recorded on or after October 1,

 2006, any provision in the declaration, articles of
 incorporation or bylaws that requires any declaration recorded
 after April 1, 1992, may not require the consent or joinder of
 some or all mortgagees of units or any other portion of the
 condominium property to or in amendments to the declaration,
 articles of incorporation or bylaws, or for any other matter
 shall be enforceable only as unless the requirement is limited
 to the following matters amendments materially affecting the
 rights or interests of the mortgagees, or as otherwise required
 by the Federal National Mortgage Association or the Federal Home
 Loan Mortgage Corporation, and unless the requirement provides
 that such consent may not be unreasonably withheld. It shall be
 presumed that, except as to:
 - 1. Those matters described in subsections (4) and (8), and
- 2. Amendments to the declaration, articles of incorporation or by-laws which adversely affect the priority of the mortgagee's lien or the mortgagee's rights to foreclose its lien or otherwise materially affect the rights and interests of the mortgagees.
- (b) As to mortgages recorded before the effective date of this amendment, any existing provisions in the declaration, articles of incorporation or by-laws requiring mortgagee consent shall be enforceable.
- (c) In securing consent or joinder the association shall be entitled to rely upon the public records to identify the holders of outstanding mortgages. The association may use the address provided in the original recorded mortgage document, unless there is a different address for the holder of the mortgage in a

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recorded assignment or modification of the mortgage, which recorded assignment or modification must reference the official records book and page of which the original mortgage was recorded. Once the association has identified the recorded mortgages of record, the association shall request of each unit owner whose unit is encumbered by a mortgage of record any information the owner has in his or her possession regarding the name and address of the person to whom mortgage payments are currently being made. Notice shall be sent to such person if it is in addition to the name and address of the mortgagee or assignee of the mortgage as shown by the public record. The association shall be deemed to have complied with this requirement by making the written request of the unit owners required hereunder. Any notices required to be sent to the mortgagees hereunder shall be sent to all available addresses provided to the association.

- (d) Any notice to the mortgagees required hereunder may be sent by a method that establishes proof of delivery, and any mortgagee who fails to respond within sixty (60) days of the date of mailing shall be deemed to have consented to the amendment.
- (e) For those amendments requiring mortgagee consent on or after October 1, 2006, do not materially affect the rights or interests of mortgagees. in the event mortgagee consent is provided other than by properly recorded joinder, such consent shall be evidenced by affidavit of the association recorded in the public records of the county where the declaration is recorded. Any amendment adopted without the required consent of a mortgagee shall be voidable only by a mortgagee who was entitled to notice and an opportunity to consent. An action to void an amendment shall be subject to the statute of limitations

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- beginning five years from the date of discovery as to the amendments described in subparagraph (a)1. hereinabove and five (5) years from the date of recordation of the certificate of amendment for all other amendments. This provision shall apply to all mortgages, regardless of the date of recordation of the mortgage.
- Section 3. Paragraph (1) of subsection (2) of section 718.112, Florida Statutes, is amended to read:

718.112 Bylaws.--

- (2) REQUIRED PROVISIONS.--The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:
- Certificate of compliance. -- There shall be a provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance of the condominium units with the applicable fire and life safety code. Notwithstanding the provisions of chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association, condominium, or unit owner is not obligated to retrofit the common elements or units of a residential condominium with a fire sprinkler system or other engineered lifesafety system in a building that has been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting and engineered lifesafety system by the affirmative vote of two-thirds of all voting interests in the affected condominium. However, a condominium association may not vote to forego the retrofitting with a fire sprinkler system of common areas in a high-rise building. For purposes of this subsection, the term "high-rise building" means a building that is greater

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- than 75 feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest occupiable story. For purposes of this subsection, the term "common areas" means any enclosed hallway, corridor, lobby, stairwell, or entryway. In no event shall the local authority having jurisdiction require completion of retrofitting of common areas with a sprinkler system before the end of 2025 2014.
- A vote to forego retrofitting may be obtained by 1. limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, and shall be effective upon the recording of a certificate attesting to such vote in the public records of the county where the condominium is located. The association shall mail, hand deliver, or electronically transmit to each unit owner written notice at least 14 days prior to such membership meeting in which the vote to forego retrofitting of the required fire sprinkler system is to take place. Within 30 days after the association's opt-out vote, notice of the results of the opt-out vote shall be mailed, hand delivered, or electronically transmitted to all unit owners. Evidence of compliance with this 30-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association. After such notice is provided to each owner, a copy of such notice shall be provided by the current owner to a new owner prior to closing and shall be provided by a unit owner to a renter prior to signing a lease.
- 2. As part of the information collected annually from condominiums, the division shall require condominium associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been

Amendment No. 1

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undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of condominiums that have elected to forego retrofitting.

Section 4. Section 718.114, Florida Statutes, is amended to read:

718.114 Association powers. -- An association has the power to enter into agreements, to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities. It has this power whether or not the lands or facilities are contiguous to the lands of the condominium, if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners. All of these leaseholds, memberships, and other possessory or use interests existing or created at the time of recording the declaration must be stated and fully described in the declaration. Subsequent to the recording of the declaration, agreements acquiring these leaseholds, memberships, or other possessory or use interests not entered into within 12 months following the recording of the declaration shall be considered a material alteration or substantial addition to the real property that is association property, and the association may not acquire or enter into agreements acquiring these leaseholds, memberships, or other possessory or use interests except as authorized by the declaration as provided in s. 718.113. The declaration may provide that the rental, membership fees, operations, replacements, and other expenses are common expenses and may impose covenants and restrictions concerning their use and may contain other provisions not inconsistent with this

chapter. A condominium association may conduct bingo games as provided in s. 849.0931.

Section 5. Subsections (1) and (2) of section 718.404, Florida Statutes, are amended to read:

- 718.404 Mixed-use condominiums.--When a condominium consists of both residential and commercial units, the following provisions shall apply:
- (1) The condominium documents shall not provide that the owner of any commercial unit shall have the authority to veto amendments to the declaration, articles of incorporation, bylaws, or rules or regulations of the association. This subsection shall apply retroactively as a remedial measure.
- (2) Subject to s. 718.301, where the number of residential units in the condominium equals or exceeds 50 percent of the total units operated by the association, owners of the residential units shall be entitled to vote for a majority of the seats on the board of administration. This subsection shall apply retroactively as a remedial measure.

Section 6. Subsections (4) and (5) of section 720.302, Florida Statutes, are amended to read:

720.302 Purposes, scope, and application.--

- (4) This chapter does not apply to any association that is subject to regulation under chapter 718, chapter 719, or chapter 721; or to any nonmandatory association formed under chapter 723, except to the extent that a provision of chapter 718, chapter 719, or chapter 721 is expressly incorporated into this chapter for the purpose of regulating homeowners' associations.
- (5) Unless expressly stated to the contrary, corporations not for profit that operate residential homeowners' associations in this state shall be governed by and subject to chapter 607, if the association was incorporated thereunder, or to chapter

617, if the association was incorporated thereunder, and this chapter. This subsection is intended to clarify existing law.

Section 7. Paragraph (a) of subsection (2), and subsections (5), (6), and (7) of section 720.303, Florida Statutes, as amended by section 18 of chapter 2004-345 and section 135 of chapter 2005-2, Laws of Florida, are amended, and paragraph (d) is added to subsection (5) of that section, to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.--

(2) BOARD MEETINGS. --

- (a) A meeting of the board of directors of an association occurs whenever a quorum of the board gathers to conduct association business. All meetings of the board must be open to all members except for meetings between the board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. The provisions of this subsection shall also apply to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of association funds and to meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.
- (5) INSPECTION AND COPYING OF RECORDS.--The official records shall be maintained within the state and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within 10 business days after receipt of a written request for access. This subsection may be complied with by having a copy of the

official records available for inspection or copying in the community. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages.

- (d) The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the residential subdivision or the association other than information or documents required by this chapter to be made available or disclosed. The association or its authorized agent may charge a reasonable fee to the prospective purchaser or lienholder or the current parcel owner or member for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, if the fee does not exceed \$50 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.
 - (6) BUDGETS.--
- (a) The association shall prepare an annual budget that sets out the annual operating expenses. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges paid for by the association for recreational amenities, whether owned by the association, the developer, or another person. The association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The copy must be provided to the member within the time limits set forth in subsection (5).

- (b) In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance for which the association is responsible to the extent that the governing documents do not limit increases in assessments, including reserves. If the budget of the association includes reserve accounts, such reserves shall be determined, maintained, and waived in the manner provided in this subsection. Once an association provides for reserve accounts in the budget, the association shall thereafter determine, maintain, and waive reserves in compliance with the provisions of this subsection.
- (c) If the budget of the association does not provide for reserve accounts governed by this subsection and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided, each financial report for the preceding fiscal year required by subsection (7) shall contain the following statement in conspicuous type: THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO THE PROVISIONS OF SECTION 720.303(6), FLORIDA STATUTES, UPON THE APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION.
- (d) An association shall be deemed to have provided for reserve accounts when reserve accounts have been initially established by the developer or when the membership of the association affirmatively elects to provide for reserves. If reserve accounts are not initially provided for by the developer, the membership of the association may elect to do so upon the affirmative approval of not less than a majority of the

total voting interests of the association. Such approval may be attained by vote of the members at a duly called meeting of the membership or upon a written consent executed by not less than a majority of the total voting interests in the community. The approval action of the membership shall state that reserve accounts shall be provided for in the budget and the approval action of the membership shall designate the components for which the reserve accounts are to be established. Upon approval by the membership, the board of directors shall provide for the required reserve accounts for inclusion in the budget in the next fiscal year following the approval and in each year thereafter. Once established as provided in this subsection, the reserve accounts shall be funded or maintained or shall have their funding waived in the manner provided in paragraph (f).

- (e) The amount to be reserved in any account established shall be computed by means of a formula that is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates of cost or useful life of a reserve item.
- established, the membership of the association upon a majority vote at a meeting at which a quorum is present may provide for no reserves or less reserves than required by this section. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves as included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves. Any vote taken pursuant to this subsection

budget year.

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(g) Funding formulas for reserves authorized by this section shall be based on either a separate analysis of each of

to waive or reduce reserves shall be applicable only to one

- the required assets or a pooled analysis of two or more of the required assets.
- 1. If the association maintains separate reserve accounts for each of the required assets, the amount of the contribution to each reserve account shall be the sum of the following two calculations:
- The total amount necessary, if any, to bring a negative a. component balance to zero; and
- b. The total estimated deferred maintenance expense or estimated replacement cost of the reserve component less the estimated balance of the reserve component as of the beginning of the period for which the budget will be in effect. The remainder, if greater than zero, shall be divided by the estimated remaining useful life of the component. The formula may be adjusted each year for changes in estimates and deferred maintenance performed during the year and may include factors such as inflation and earnings on invested funds.
- 2. If the association maintains a pooled account of two or more of the required reserve assets, the amount of the contribution to the pooled reserve account as disclosed on the proposed budget shall not be less than that required to ensure that the balance on hand at the beginning of the period for which the budget will go into effect plus the projected annual cash inflows over the remaining estimated useful life of all of the assets that make up the reserve pool are equal to or greater than the projected annual cash outflows over the remaining estimated useful lives of all of the assets that make up the

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- reserve pool, based on the current reserve analysis. The projected annual cash inflows may include estimated earnings from investment of principal. The reserve funding formula shall not include any type of balloon payments.
- (h) Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a meeting at which a quorum is present. Prior to turnover of control of an association by a developer to parcel owners, the developercontrolled association shall not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association.
- FINANCIAL REPORTING. -- Within 90 days after the end of (7) the fiscal year, or annually on the date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a an annual financial report for the preceding fiscal year. Within 21 60 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, close of the fiscal year. the association shall, within the time limits set forth in subsection (5), provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. Financial reports shall be prepared as follows:
- An association that meets the criteria of this paragraph shall prepare or cause to be prepared a complete set

of financial statements in accordance with generally accepted accounting principles as adopted by the Board of Accountancy. The financial statements shall be based upon the association's total annual revenues, as follows:

- 1. An association with total annual revenues of \$100,000 or more, but less than \$200,000, shall prepare compiled financial statements.
- 2. An association with total annual revenues of at least \$200,000, but less than \$400,000, shall prepare reviewed financial statements.
- 3. An association with total annual revenues of \$400,000 or more shall prepare audited financial statements.
- (b)1. An association with total annual revenues of less than \$100,000 shall prepare a report of cash receipts and expenditures.
- 2. An association in a community of fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a) unless the governing documents provide otherwise.
- 3. A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

- (c) If 20 percent of the parcel owners petition the board for a level of financial reporting higher than that required by this section, the association shall duly notice and hold a meeting of members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the parcel owners, the association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the governing documents, and shall provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:
- Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures;
- 2. Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements; or
- 3. Audited financial statements if the association is otherwise required to prepare reviewed financial statements.
- (d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:
- A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;
- 2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
- 3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Section 8. Subsection (2) of section 720.303, Florida

Statutes, as amended by section 2 of chapter 2004-345 and section 15 of chapter 2004-353, Laws of Florida, is repealed.

Section 9. Section 720.3035, Florida Statutes, is created to read:

720.3035 Architectural control covenants; parcel owner improvements; rights and privileges.--

- (1) The authority of an association or any architectural, construction improvement, or other such similar committee of an association to review and approve plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel, or to enforce standards for the external appearance of any structure or improvement located on a parcel, shall only be permitted to the extent that the authority is specifically stated or reasonably inferred as to such location, size, type, or appearance in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants.
- (2) If the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants provides options for the use of material, the size of the structure or improvement, the design of the structure or improvement, or the location of the structure or improvement on the parcel, neither the association nor any architectural, construction improvement, or other such similar committee of the association shall restrict the right of a parcel owner to select from the options provided in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants.
- (3) Unless otherwise specifically stated in the declaration of covenants or other published guidelines and

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parcel shall be deemed to have only one front for purposes of determining the required front setback even if the parcel is bounded by a roadway or other easement on more than one side.

When the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants does not provide for specific setback limitations, the applicable county or municipal setback limitations shall apply, and neither the association nor any architectural, construction improvement, or other such similar committee of the association shall enforce or attempt to enforce any setback limitation that is inconsistent with the applicable county or municipal standard or standards.

(4) Each parcel owner shall be entitled to the rights and privileges set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants concerning the use of the parcel, and the construction of permitted structures and improvements on the parcel and such rights and privileges shall not be unreasonably infringed upon or impaired by the association or any architectural, construction improvement, or other such similar committee of the association. If the association or any architectural, construction improvement, or other such similar committee of the association should knowingly and willfully infringe upon or impair the rights and privileges set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants, the adversely affected parcel owner shall be entitled to recover damages caused by such infringement or impairment, including any costs and reasonable attorney's fees incurred in preserving or restoring the rights and privileges of the parcel owner set

forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants.

(5) Neither the association nor any architectural, construction improvement, or other such similar committee of the association shall enforce any policy or restriction that is inconsistent with the rights and privileges of a parcel owner set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants, whether uniformly applied or not. Neither the association nor any architectural, construction improvement, or other such similar committee of the association may rely upon a policy or restriction that is inconsistent with the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants, whether uniformly applied or not, in defense of any action taken in the name of or on behalf of the association against a parcel owner.

Section 10. Subsection (1) of section 720.305, Florida Statutes, is amended to read:

720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights; failure to fill sufficient number of vacancies on board of directors to constitute a quorum; appointment of receiver upon petition of any member.--

(1) Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter, the governing documents of the community, and the rules of the association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any member against:

- (a) The association;
- (b) A member;
- (c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and
- (d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney's fees, may recover additional amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any other available right or remedy.

Section 11. Paragraph (c) of subsection (1) of section 720.306, Florida Statutes, is amended to read:

720.306 Meetings of members; voting and election procedures; amendments.--

- (1) OUORUM; AMENDMENTS.--
- (c) Unless otherwise provided in the governing documents as originally recorded or permitted by this chapter or chapter 617, an amendment may not materially and adversely alter the proportionate voting interest appurtenant to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment. For purposes of this section,

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- a change in quorum requirements is not an alteration of voting
 interests. The merger or consolidation of one or more
 associations under a plan of merger or consolidation under
 chapter 607 or chapter 617 shall not be considered a material or
 adverse alteration of the proportionate voting interest
 appurtenant to a parcel.
 - Section 12. Paragraph (t) is added to subsection (3) of section 720.307, Florida Statutes, to read:
 - 720.307 Transition of association control in a community.--With respect to homeowners' associations:
 - (3) At the time the members are entitled to elect at least a majority of the board of directors of the homeowners' association, the developer shall, at the developer's expense, within no more than 90 days deliver the following documents to the board:
 - (t) The financial records, including financial statements of the association, and source documents from the incorporation of the association through the date of turnover. The records shall be audited by an independent certified public accountant for the period from the incorporation of the association or from the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation. All financial statements shall be prepared in accordance with generally accepted accounting principles and shall be audited in accordance with generally accepted auditing standards, as prescribed by the Board of Accountancy, pursuant to chapter 473. The certified public accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine whether expenditures were for association purposes and the billings, cash receipts, and related records of

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the association to determine whether the developer was charged and paid the proper amounts of assessments. This paragraph applies to associations with a date of incorporation after December 31, 2006.

Section 13. Section 720.308, Florida Statutes, is amended to read:

720.308 Assessments and charges .--

- ASSESSMENTS. -- For any community created after October 1, 1995, the governing documents must describe the manner in which expenses are shared and specify the member's proportional share thereof. Assessments levied pursuant to the annual budget or special assessment must be in the member's proportional share of expenses as described in the governing document, which share may be different among classes of parcels based upon the state of development thereof, levels of services received by the applicable members, or other relevant factors. While the developer is in control of the homeowners' association, it may be excused from payment of its share of the operating expenses and assessments related to its parcels for any period of time for which the developer has, in the declaration, obligated itself to pay any operating expenses incurred that exceed the assessments receivable from other members and other income of the association. This section does not apply to an association, no matter when created, if the association is created in a community that is included in an effective development-ofregional-impact development order as of the effective date of this act, together with any approved modifications thereto.
 - (2) GUARANTEE OF COMMON EXPENSES. --
- (a) Establishment of a guarantee.--If a guarantee of the assessments of parcel owners is not included in the purchase contracts or declaration, any agreement establishing a guarantee

the requirements of this section.

- shall be effective only upon the approval of a majority of the
 voting interests of the members other than the developer.

 Approval shall be expressed at a meeting of the members voting
 in person or by limited proxy or by agreement in writing without
 a meeting if provided in the bylaws. Such guarantee shall meet
 - (b) Guarantee period.--The period of time for the guarantee shall be indicated by a specific beginning and ending date or event.
 - 1. The ending date or event shall be the same for all of the members of a homeowners' association, including members in different phases of the development.
 - 2. The guarantee may provide for different intervals of time during a guarantee period with different dollar amounts for each such interval.
 - 3. The guarantee may provide that after the initial stated period the developer has an option to extend the guarantee for one or more additional stated periods. The extension of a guarantee is limited to extending the ending date or event; therefore, the developer does not have the option of changing the level of assessments guaranteed.
 - amount of the guarantee shall be an exact dollar amount for each parcel identified in the declaration. Regardless of the stated dollar amount of the guarantee, assessments charged to a member shall not exceed the maximum obligation of the member based on the total amount of the adopted budget and the member's proportionate ownership share of the common elements.
 - (4) CASH FUNDING REQUIREMENTS DURING THE GUARANTEE.--The cash payments required from the guarantor during the guarantee period shall be determined as follows:

- (a) If at any time during the guarantee period the funds collected from member assessments at the guaranteed level and other revenues collected by the association are not sufficient to provide payment, on a timely basis, of all assessments, including the full funding of the reserves unless properly waived, the guarantor shall advance sufficient cash to the association at the time such payments are due.
- (b) Expenses incurred in the production of nonassessment revenues, not in excess of the nonassessment revenues, shall not be included in the assessments. If the expenses attributable to nonassessment revenues exceed nonassessment revenues, only the excess expenses must be funded by the guarantor. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment; such expense shall not be charged to the guarantor; and the net investment income shall be retained by the association. Each such nonassessment-revenue-generating activity shall be considered separately. Any portion of the parcel assessment that is budgeted for designated capital contributions of the association shall not be used to pay operating expenses.
- (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The guarantor's total financial obligation to the association at the end of the guarantee period shall be determined on the accrual basis using the following formula: the guarantor shall pay any deficits that exceed the guaranteed amount, less the total regular periodic assessments earned by the association from the members other than the guarantor during the guarantee period, regardless of whether the actual level charged was less than the maximum guaranteed amount.
- (6) EXPENSES.--Expenses incurred in the production of nonassessment revenues, not in excess of the nonassessment

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revenues, shall not be included in the operating expenses. If the expenses attributable to nonassessment revenues exceed nonassessment revenues, only the excess expenses must be funded by the guarantor. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment; such expense shall not be charged to the guarantor; and the net investment income shall be retained by the association. Each such nonassessment-revenue-generating activity shall be considered separately. Any portion of the parcel assessment that is budgeted for designated capital contributions of the association shall not be used to pay operating expenses.

Section 14. Section 720.311, Florida Statutes, is amended to read:

720.311 Dispute resolution.--

The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to litigation. The filing of any petition for mediation or arbitration or the serving of an offer for presuit mediation as provided for in this section shall toll the applicable statute of limitations. Any recall dispute filed with the department pursuant to s. 720.303(10) shall be conducted by the department in accordance with the provisions of ss. 718.112(2)(j) and 718.1255 and the rules adopted by the division. In addition, the department shall conduct mandatory binding arbitration of election disputes between a member and an association pursuant to s. 718.1255 and rules adopted by the division. Neither election disputes nor recall disputes are eligible for presuit mediation; these disputes shall be arbitrated by the department. At the conclusion of the proceeding, the department shall charge

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the parties a fee in an amount adequate to cover all costs and expenses incurred by the department in conducting the proceeding. Initially, the petitioner shall remit a filing fee of at least \$200 to the department. The fees paid to the department shall become a recoverable cost in the arbitration proceeding, and the prevailing party in an arbitration proceeding shall recover its reasonable costs and attorney's fees in an amount found reasonable by the arbitrator. The department shall adopt rules to effectuate the purposes of this section.

Disputes between an association and a parcel owner (2)(a) regarding use of or changes to the parcel or the common areas and other covenant enforcement disputes, disputes regarding amendments to the association documents, disputes regarding meetings of the board and committees appointed by the board, membership meetings not including election meetings, and access to the official records of the association shall be the subject of an offer filed with the department for presuit mandatory mediation served by an aggrieved party before the dispute is filed in court. Presuit mediation proceedings must be conducted in accordance with the applicable Florida Rules of Civil Procedure, and these proceedings are privileged and confidential to the same extent as court-ordered mediation. Disputes subject to presuit mediation under this section shall not include the collection of any assessment, fine, or other financial obligation, including attorney's fees and costs, claimed to be due or any action to enforce a prior mediation settlement agreement between the parties. Also, in any dispute subject to presuit mediation under this section where emergency relief is required, a motion for temporary injunctive relief may be filed with the court without first complying with the presuit

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mediation requirements of this section. After any issues regarding emergency or temporary relief are resolved, the court may either refer the parties to a mediation program administered by the courts or require mediation under this section. An arbitrator or judge may not consider any information or evidence arising from the presuit mediation proceeding except in a proceeding to impose sanctions for failure to attend a presuit mediation session or with the parties' agreement in a proceeding seeking to enforce the agreement. Persons who are not parties to the dispute may not attend the presuit mediation conference without the consent of all parties, except for counsel for the parties and a corporate representative designated by the association. When mediation is attended by a quorum of the board, such mediation is not a board meeting for purposes of notice and participation set forth in s. 720.303. An aggrieved party shall serve on the responding party a written offer to participate in presuit mediation in substantially the following form:

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STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION

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The alleged aggrieved party, , hereby offers to , as the responding party, to enter into presuit mediation in connection with the following dispute, which by statute is of a type that is subject to presuit mediation:

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(List specific nature of the dispute or disputes to be mediated and the authority supporting a finding of a violation as to each dispute.)

Pursuant to section 720.311, Florida Statutes, this offer to resolve the dispute through presuit mediation is required before a lawsuit can be filed concerning the dispute. Pursuant to the statute, the aggrieved party is hereby offering to engage in presuit mediation with a neutral third-party mediator in order to attempt to resolve this dispute without court action, and the aggrieved party demands that you likewise agree to this process. If you fail to agree to presuit mediation, or if you agree and later fail to follow through with your agreement to mediate, suit may be brought against you without further warning.

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The process of mediation involves a supervised negotiation process in which a trained, neutral thirdparty mediator meets with both parties and assists them in exploring possible opportunities for resolving part or all of the dispute. The mediation process is a voluntary one. By agreeing to participate in presuit mediation, you are not bound in any way to change your position or to enter into any type of agreement. Furthermore, the mediator has no authority to make any decisions in this matter or to determine who is right or wrong and merely acts as a facilitator to ensure that each party understands the position of the other party and that all reasonable settlement options are fully explored. All mediation communications are confidential under the Mediation Confidentiality and Privilege Act pursuant to sections 44.401044.406, Florida Statutes, and a mediation participant may not disclose a mediation communication to a person other

than a mediation participant or a participant's counsel.

If an agreement is reached, it shall be reduced to writing and becomes a binding and enforceable commitment of the parties. A resolution of one or more disputes in this fashion avoids the need to litigate these issues in court. The failure to reach an agreement, or the failure of a party to participate in the process, results in the mediator's declaring an impasse in the mediation, after which the aggrieved party may proceed to court on all outstanding, unsettled disputes.

The aggrieved party has selected and hereby lists three certified mediators who we believe to be neutral and qualified to mediate the dispute. You have the right to select any one of these mediators. The fact that one party may be familiar with one or more of the listed mediators does not mean that the mediator cannot act as a neutral and impartial facilitator. Any mediator who cannot act in this capacity ethically must decline to accept engagement. The mediators that we suggest, and their current hourly rates, are as follows:

(List the names, addresses, telephone numbers, and hourly rates of the mediators. Other pertinent information about the background of the mediators may be included as an attachment.)

You may contact the offices of these mediators to confirm that the listed mediators will be neutral and will not show any favoritism toward either party. The names of certified mediators may be found through the office of the clerk of the circuit court for this circuit.

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If you agree to participate in the presuit mediation process, the statute requires that each party is to pay one-half of the costs and fees involved in the presuit mediation process unless otherwise agreed by all parties. An average mediation may require 3 to 4 hours of the mediator's time, including some preparation time, and each party would need to pay one-half of the mediator's fees as well as his or her own attorney's fees if he or she chooses to employ an attorney in connection with the mediation. However, use of an attorney is not required and is at the option of each party. The mediator may require the advance payment of some or all of the anticipated fees. The aggrieved party hereby agrees to pay or prepay one-half of the mediator's estimated fees and to forward this amount or such other reasonable advance deposits as the mediator may require for this purpose. Any funds deposited will be returned to you if these are in excess of your share of the fees incurred.

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If you agree to participate in presuit mediation in order to attempt to resolve the dispute and thereby avoid further legal action, please sign below and

888	clearly indicate which mediator is acceptable to you.
889	We will then ask the mediator to schedule a mutually
890	convenient time and place for the mediation conference
891	to be held. The mediation conference must be held
892	within 90 days after the date of this letter unless
893	extended by mutual written agreement. In the event
894	that you fail to respond within 20 days after the date
895	of this letter, or if you fail to agree to at least
896	one of the mediators that we have suggested and to pay
897	or prepay to the mediator one-half of the costs
898	involved, the aggrieved party will be authorized to
899	proceed with the filing of a lawsuit against you
900	without further notice and may seek an award of
901	attorney's fees or costs incurred in attempting to
902	obtain mediation.
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904	Should you wish, you may also elect to waive presuit
905	mediation so that this matter may proceed directly to
906	court.
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908	Therefore, please give this matter your immediate
909	attention. By law, your response must be mailed by
910	certified mail, return receipt requested, with an
911	additional copy being sent by regular first-class mail
912	to the address shown on this offer.
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917	RESPONDING PARTY: CHOOSE ONLY ONE OF THE TWO OPTIONS
918	BELOW. YOUR SIGNATURE INDICATES YOUR AGREEMENT TO THAT
919	CHOICE.
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921	AGREEMENT TO MEDIATE
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923	The undersigned hereby agrees to participate in
924	presuit mediation and agrees to the following mediator
925	or mediators as acceptable to mediate this dispute:
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927	(List acceptable mediator or mediators.)
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929	I/we further agree to pay or prepay one-half of the
930	mediator's fees and to forward such advance deposits
931	as the mediator may require for this purpose.
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934	Signature of responding party #1
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937	Signature of responding party #2 (if applicable)(if
938	property is owned by more than one person, all owners
939	must sign)
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941	WAIVER OF MEDIATION
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943	The undersigned hereby waives the right to participate
944	in presuit mediation of the dispute listed above and
945	agrees to allow the aggrieved party to proceed in
946	court on such matters.
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Signature of responding party #2 (if applicable) (if property is owned by more than one person, all owners

Service of the statutory offer to participate in presuit mediation shall be effected by sending a letter in substantial conformity with the above form by certified mail, return receipt requested, with an additional copy being sent by regular first-class mail, to the address of the responding party as it last appears on the books and records of the association. The responding party shall have 20 days from the date of the mailing of the statutory offer to serve a response to the aggrieved party in writing. The response shall be served by certified mail, return receipt requested, with an additional copy being sent by regular first-class mail, to the address shown on the statutory offer. In the alternative, the responding party may waive mediation in writing. Notwithstanding the foregoing, once the parties have agreed on a mediator, the mediator may reschedule the mediation for a date and time mutually convenient to the parties. The department shall conduct the proceedings through the use of department mediators or refer the disputes to private mediators who have been duly certified by the department as provided in paragraph (c). The parties shall share the costs of presuit mediation equally, including the fee charged by the mediator, if any, unless the parties agree otherwise, and the mediator may require advance payment of its reasonable fees and costs. The failure of any party to

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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respond to a demand or response, to agree upon a mediator, to make payment of fees and costs within the time established by the mediator, or to appear for a scheduled mediation session shall operate as an impasse in the presuit mediation by such party, entitling the other party to proceed in court and to seek an award of the costs and fees associated with the mediation. Additionally, if any presuit mediation session cannot be scheduled and conducted within 90 days after the offer to participate in mediation was filed, an impasse shall be deemed to have occurred unless both parties agree to extend this deadline. If a department mediator is used, the department may charge such fee as is necessary to pay expenses of the mediation, including, but not limited to, the salary and benefits of the mediator and any travel expenses incurred. The petitioner shall initially file with the department upon filing the disputes, a filing fee of \$200, which shall be used to defray the costs of the mediation. At the conclusion of the mediation, the department shall charge to the parties, to be shared equally unless otherwise agreed by the parties, such further fees as are necessary to fully reimburse the department for all expenses incurred in the mediation.

(c) (b) If presuit mediation as described in paragraph (a) is not successful in resolving all issues between the parties, the parties may file the unresolved dispute in a court of competent jurisdiction or elect to enter into binding or nonbinding arbitration pursuant to the procedures set forth in s. 718.1255 and rules adopted by the division, with the arbitration proceeding to be conducted by a department arbitrator or by a private arbitrator certified by the department. If all parties do not agree to arbitration proceedings following an unsuccessful mediation, any party may

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file the dispute in court. A final order resulting from nonbinding arbitration is final and enforceable in the courts if a complaint for trial de novo is not filed in a court of competent jurisdiction within 30 days after entry of the order. As to any issue or dispute that is not resolved at presuit mediation, and as to any issue that is settled at presuit mediation but is thereafter subject to an action seeking enforcement of the mediation settlement, the prevailing party in any subsequent arbitration or litigation proceeding shall be entitled to seek recovery of all costs and attorney's fees incurred in the presuit mediation process.

(d) (c) The department shall develop a certification and training program for private mediators and private arbitrators which shall emphasize experience and expertise in the area of the operation of community associations. A mediator or arbitrator shall be certified to conduct mediation or arbitration under this section by the department only if he or she has been certified as a circuit court civil mediator or arbitrator, respectively, pursuant to the requirements established attended at least 20 hours of training in mediation or arbitration, as appropriate, and only if the applicant has mediated or arbitrated at least 10 disputes involving community associations within 5 years prior to the date of the application, or has mediated or arbitrated 10 disputes in any area within 5 years prior to the date of application and has completed 20 hours of training in community association disputes. In order to be certified by the department, any mediator must also be certified by the Florida Supreme Court. The department may conduct the training and certification program within the department or may contract with an outside vendor to perform the training or certification. The expenses of Amendment No. 1

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operating the training and certification and training program shall be paid by the moneys and filing fees generated by the arbitration of recall and election disputes and by the mediation of those disputes referred to in this subsection and by the training fees.

- (e) (d) The presuit mediation procedures provided by this subsection may be used by a Florida corporation responsible for the operation of a community in which the voting members are parcel owners or their representatives, in which membership in the corporation is not a mandatory condition of parcel ownership, or which is not authorized to impose an assessment that may become a lien on the parcel.
- (3) The department shall develop an education program to assist homeowners, associations, board members, and managers in understanding and increasing awareness of the operation of homeowners' associations pursuant to this chapter and in understanding the use of alternative dispute resolution techniques in resolving disputes between parcel owners and associations or between owners. Such education program may include the development of pamphlets and other written instructional guides, the holding of classes and meetings by department employees or outside vendors, as the department determines, and the creation and maintenance of a website containing instructional materials. The expenses of operating the education program shall be initially paid by the moneys and filing fees generated by the arbitration of recall and election disputes and by the mediation of those disputes referred to in this subsection.

Section 15. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2006.

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Remove the entire title and insert:

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An act relating to community associations; creating s. 712.11, F.S.; providing for the revival of certain declarations that have been extinguished; amending s. 718.110, F.S.; revising provisions relating to the amendment of declarations; providing legislative findings and a finding of compelling state interest; providing criteria for consent to an amendment; requiring notice regarding proposed amendments to mortgagees; providing criteria for notification; amending s. 718.112, F.S.; revising implementation date for retrofitting of common areas with a sprinkler system; amending s. 718.114, F.S.; providing that certain leaseholds, memberships, or other possessory or use interests shall be considered a material alteration or substantial addition to certain real property; amending s. 718.404, F.S.; providing retroactive application of provisions relating to mixed-use condominiums; amending s. 720.302, F.S.; revising governing provisions relating to corporations that operate residential homeowners' associations; amending s. 720.303, F.S.; revising provisions relating to open meetings of the association; requiring the budget to provide for annual operating expenses; authorizing the budget to include reserve accounts for capital expenditures and deferred maintenance; providing the amount to be reserved; authorizing the association to adjust replacement reserve assessments annually; authorizing the developer to vote to waive the reserves or reduce the funding of reserves for a certain period; revising provisions relating to financial

reporting; revising time periods in which the association must complete its reporting; repealing s. 720.303(2), F.S., as amended, relating to board meetings, to remove conflicting versions of that subsection; creating s. 720.3035, F.S.; providing for architectural control covenants and parcel owner improvements; authorizing the review and approval of plans and specifications; providing limitations; providing rights and privileges for parcel owners as set forth in the declaration of covenants; amending s. 720.305, F.S.; providing that, where a member is entitled to collect attorney's fees against the association, the member may also recover additional amounts as determined by the court; amending s. 720.306, F.S.: providing that certain mergers or consolidations of an association shall not be considered a material or adverse alteration of the proportionate voting interest appurtenant to a parcel; revising provisions relating to items that members and parcel owners may address at membership meetings; amending s. 720.307, F.S.; requiring developers to deliver financial records to the board in any transition of association control to members; requiring certain information to be included in the records and for the records to be prepared in a specified manner; amending s. 720.308, F.S.; providing that a quarantee of common expenses shall be effective under certain circumstances; requiring the guarantee to meet certain requirements; authorizing the guarantee to provide certain requirements; requiring the stated dollar amount of the guarantee to be an exact dollar amount for each parcel identified in the declaration; providing payments required from the guarantor to be determined in a certain

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manner; providing a formula to determine the guarantor's total financial obligation to the association; providing that certain expenses incurred in the production of certain revenues shall not be included in the common expenses; amending s. 720.311, F.S.; revising provisions relating to dispute resolution; providing that the filing of any petition for arbitration or the serving of an offer for presuit mediation shall toll the applicable statute of limitations; providing that certain disputes between an association and a parcel owner shall be subject to presuit mediation; revising provisions to conform; providing that temporary injunctive relief may be sought in certain disputes subject to presuit mediation; authorizing the court to refer the parties to mediation under certain circumstances; requiring the aggrieved party to serve on the responding party a written offer to participate in presuit mediation; providing a form for such offer; providing that service of the offer is effected by the sending of such an offer in a certain manner; providing that the prevailing party in any subsequent arbitration or litigation proceedings is entitled to seek recovery of all costs and attorney's fees incurred in the presuit mediation process; requiring the mediator or arbitrator to meet certain certification requirements; removing a requirement relating to development of an education program to increase awareness of the operation of homeowners' associations and the use of alternative dispute resolution techniques; providing effective dates.

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Bill No. 391 CS

	COUNCIL/COMMITTEE ACTION
	ADOPTED (Y/N)
	ADOPTED AS AMENDED (Y/N)
	ADOPTED W/O OBJECTION (Y/N)
	FAILED TO ADOPT (Y/N)
	WITHDRAWN (Y/N)
	OTHER
1	Council/Committee hearing bill: Judiciary Appropriations
2	Representative(s) Domino offered the following:
3	
4	Amendment to Amendment (1) by Representative Domino (with
5	title amendment)
6	Between line(s) 11 and 12 and insert:
7	Section 2. Subsection (5) is added to section 718.106,
8	Florida Statutes, to read:
9	718.106 Condominium parcels; appurtenances; possession and
10	enjoyment
11	(5) A local ordinance or regulation may not establish any
12	limitation on the ability of unit owners or an association to
13	permit guests, licensees, members, or invitees to use or access
14	their units or common elements for the purpose of accessing a
15	public beach or private beach adjacent to the condominium.
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17	========== T I T L E A M E N D M E N T =========
18	Remove line(s) 1077 and insert:
19	declarations that have been extinguished; amending s. 718.106,
20	F.S.; prohibiting local ordinances that limit the access of
21	certain persons to beaches that adjoin condominiums; amending s.
22	

Bill No. 391 CS

	D111 No. 371 41
COUNCIL/COMMITTEE	ACTION
ADOPTED	(Y/N)
ADOPTED AS AMENDED	(Y/N)
ADOPTED W/O OBJECTION	(Y/N)
FAILED TO ADOPT	(Y/N)
WITHDRAWN	(Y/N)
OTHER	
Council/Committee hear	ing bill: Judiciary Appropriations
Representative(s) Domin	no offered the following:
Amendment to Amend	dment (1) by Representative Domino (with
directory and title ame	endments)
Between line(s) 19	94 and 195 insert:
Section 6. Subsections	s (9)-(27) of section 719.103, Florida
Statutes, are renumbered	ed as subsections (10)-(28), respectively,
and a subsection (9) is	s added to that section, to read:
719.103 Definition	onsAs used in this chapter:
(9) "Equity facility	ties club" means a club comprised of
recreational facilities	s in which proprietary membership
interests are sold to	individuals, which membership interests
entitle the individual	s to use certain physical facilities owned
by the equity club. S	uch physical facilities cannot include a
residential unit or ac	commodation. For purposes of this
definition, the term ".	accommodation" shall include, but is not
limited to, any apartm	ent, residential cooperative unit,
residential condominium	m unit, cabin, lodge, hotel or motel room,

or any other accommodation designed for overnight occupancy for

one or more individuals.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES Amendment 2 to Amendment No. 1

Section 7. Section 719.507, Florida Statutes, is amended to read:

719.507 Zoning and building laws, ordinances, and regulations. -- All laws, ordinances, and regulations concerning buildings or zoning shall be construed and applied with reference to the nature and use of such property, without regard to the form of ownership. No law, ordinance, or regulation shall establish any requirement concerning the use, location, placement, or construction of buildings or other improvements which are, or may thereafter be, subjected to the cooperative or equity facilities club form of ownership, unless such requirement shall be equally applicable to all buildings and improvements of the same kind not then, or thereafter to be, subjected to the cooperative or equity facilities club form of ownership. This section does not apply if the owner in fee of any land enters into and records a covenant that existing improvements or improvements to be constructed shall not be converted to the cooperative form of residential ownership prior to 5 years after the later of the date of the covenant or completion date of the improvements. Such covenant shall be entered into with the governing body of the municipality in which the land is located or, if the land is not located in a municipality, with the governing body of the county in which the land is located.

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========= T I T L E A M E N D M E N T =========

Remove line(s) 1091 and insert:

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condominiums; amending s. 719.103; defining the term "equity facilities club"; amending s. 719.507; requiring that laws, ordinances, and regulations governing buildings and improvements

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES Amendment 2 to Amendment No. 1 on equity facilities clubs be equally applicable to such 55 buildings and improvements; amending s. 720.302, F.S.; revising 56 57

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #:

HB 637

Consumer Protection

SPONSOR(S): Seiler TIED BILLS:

None

IDEN./SIM. BILLS: SB 202

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee	9 Y, 0 N	Blanchette	Reese
2) Civil Justice Committee	6 Y, 0 N	Shaddock	Bond
3) Judiciary Appropriations Committee		Brazzell WW3	DeBeaugrine
4) State Resources Council			_(
5)			V

SUMMARY ANALYSIS

The bill amends the Florida Deceptive and Unfair Trade Practices Act to clarify that the court may allow a court-appointed person such as a receiver to address wrongdoing by bringing an action in the name of and on behalf of a defendant, such as the corporation over which the receiver has been appointed.

This bill does not appear to have a fiscal impact on state or local government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives. h0637d.JA.doc

STORAGE NAME: DATE:

3/22/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Law

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA)¹ was enacted "[t]o protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce."²

Businesses and individuals are afforded broad protection from unfair or deceptive acts or practices under the FDUTPA. The FDUTPA states a broad proscription that applies through civil enforcement across industries and business conduct generally in any medium. The FDUTPA, Part II of ch. 501, F.S., provides remedies and penalties for "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce…"³

Under the FDUTPA, the Attorney General or other enforcing authority may bring an action on behalf of a consumer⁴ and seek the appointment of a receiver⁵ or fiduciary to seek redress. A receiver only has the powers given to him or her by statute or by order of appointment.⁶ Under most circumstances, it is the receiver's duty to safeguard the property in his or her custody and to protect the rights and interests of all claimants while still maintaining neutrality.⁷ A receivership allows the court to accomplish "complete justice," with the goal of providing protection to the property at issue until the final disposition of the matter.⁸ An appointment of a receiver is an equitable question and not a matter of right.⁹ Typically, the appointment of a receiver is an ancillary remedy and can only be obtained in connection with some other action to obtain a specific relief.¹⁰

It is unclear whether under the FDUTPA a receiver or other court-appointed person has standing to bring a proceeding on behalf of defendants against a third party who may have an involvement in the wrongdoing.

Effect of Bill

The bill authorizes a court to permit actions in the name of and on behalf of the defendant enterprise. This would allow a receiver or other court-appointed person to address wrongdoing by filing suit on behalf of a defendant, such as a corporation over which the receiver has been appointed, against a third party who played some role in the alleged wrongdoing.

DATE:

STORAGE NAME:

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¹ Sections 501.201-501.213, F.S.

² Section 501.202(2), F.S.

³ Section 501.204, F.S.

⁴ Section 501.207(1)(c), F.S.

⁵ A "receiver" is defined as "[a] disinterested person appointed by a court, or by a corporation or other person, for the protection or collection of property that is the subject of diverse claims." Black's Law Dictionary 1275 (7th ed. 1999). ⁶ 44 Fla. Jur. 2d Receivers s. 49 (2005).

⁷ Id.

⁸ 44 Fla. Jur. 2d Receivers s. 2 (2005).

⁹ 44 Fla. Jur. 2d Receivers s. 3 (2005).

¹⁰ *Id*.

The bill also amends ss. 501.203 and 501.204, F.S., to capture changes in federal law from 2001 to 2006.11

C. SECTION DIRECTORY:

Sections 1 and 2 amend ss. 501.203 and 501.204, F.S., respectively, to change dates to capture changes in federal law up to July 1, 2006.

	Section 3 amends s. 501.207, F.S., to broaden the powers of a receiver.
	Section 4 provides an effective date of July 1, 2006.
	II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT
A.	FISCAL IMPACT ON STATE GOVERNMENT:
	1. Revenues: None.
	2. Expenditures: None.
B.	FISCAL IMPACT ON LOCAL GOVERNMENTS:
	1. Revenues: None.
	2. Expenditures: None.
C.	DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.
D.	FISCAL COMMENTS: None.
	III. COMMENTS
A.	CONSTITUTIONAL ISSUES:
	 Applicability of Municipality/County Mandates Provision: This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.
	2. Other: None.

DATE:

3/22/2006

¹¹ To directly link the statute to the interpretation of the federal courts and the Federal Trade Commission would be an unlawful delegation of legislative power. Therefore, the dates in the statute must be periodically updated. **PAGE**: 3 STORAGE NAME: h0637d.JA.doc

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

STORAGE NAME: DATE:

h0637d.JA.doc 3/22/2006 HB 637 2006

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A bill to be entitled

An act relating to consumer protection; amending ss. 501.203 and 501.204, F.S.; changing obsolete dates; reenacting and amending s. 501.207, F.S., relating to remedies of the enforcing authority under the Florida Deceptive and Unfair Trade Practices Act; providing that the court may order actions brought under that act on behalf of an enterprise; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

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Section 1. Subsection (3) of section 501.203, Florida Statutes, is amended to read:

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501.203 Definitions.--As used in this chapter, unless the context otherwise requires, the term:

16 17 (3) "Violation of this part" means any violation of this act or the rules adopted under this act and may be based upon any of the following as of July 1, 2006 2001:

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(a) Any rules promulgated pursuant to the Federal Trade Commission Act, 15 U.S.C. ss. 41 et seq.;

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(b) The standards of unfairness and deception set forth and interpreted by the Federal Trade Commission or the federal courts;

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(c) Any law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.

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Section 2. Subsection (2) of section 501.204, Florida Statutes, is amended to read:

Page 1 of 3

HB 637 2006

501.204 Unlawful acts and practices.--

- (2) It is the intent of the Legislature that, in construing subsection (1), due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2006 2001.
- Section 3. Subsection (1) of section 501.207, Florida Statutes, is reenacted, and subsection (3) of that section is amended to read:
 - 501.207 Remedies of enforcing authority.--
 - (1) The enforcing authority may bring:
- (a) An action to obtain a declaratory judgment that an act or practice violates this part.
- (b) An action to enjoin any person who has violated, is violating, or is otherwise likely to violate, this part.
- (c) An action on behalf of one or more consumers or governmental entities for the actual damages caused by an act or practice in violation of this part. However, damages are not recoverable under this section against a retailer who has in good faith engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated this part.
- (3) Upon motion of the enforcing authority or any interested party in any action brought under subsection (1), the court may make appropriate orders, including, but not limited to, appointment of a general or special magistrate or receiver or sequestration or freezing of assets, to reimburse consumers

Page 2 of 3

HB 637

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or governmental entities found to have been damaged; to carry out a transaction in accordance with the reasonable expectations of consumers or governmental entities; to strike or limit the application of clauses of contracts to avoid an unconscionable result; to bring actions in the name of and on behalf of the defendant enterprise; to order any defendant to divest herself or himself of any interest in any enterprise, including real estate; to impose reasonable restrictions upon the future activities of any defendant to impede her or him from engaging in or establishing the same type of endeavor; to order the dissolution or reorganization of any enterprise; or to grant legal, equitable, or other appropriate relief. The court may assess the expenses of a general or special magistrate or receiver against a person who has violated, is violating, or is otherwise likely to violate this part. Any injunctive order, whether temporary or permanent, issued by the court shall be effective throughout the state unless otherwise provided in the order.

Section 4. This act shall take effect July 1, 2006.

Page 3 of 3

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #:

HB 1099 CS

Court Actions Involving Families

SPONSOR(S): Planas

TIED BILLS: None.

IDEN./SIM. BILLS:

SB 2726

REFERENCE	ACTION	ANALYST	STAFF
1) Judiciary Committee	11 Y, 0 N, w/CS	Thomas	Hogge
2) Future of Florida's Families Committee	7 Y, 0 N	Preston	Collins
3) Judiciary Appropriations Committee		Brazzell W	DeBeaugrine
4) Justice Council			
5)			

SUMMARY ANALYSIS

The bill provides purposes and legislative intent regarding the implementation of a unified family court program in the circuit courts. The additional purposes and legislative intent include:

- To provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families, while at the same time resolving family disputes in a fair, timely, efficient, and cost-effective manner.
- That the courts embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system.
- To support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach.
- To focus on the needs of children who are involved in the litigation, refer families to resources that will make their relationships stronger, coordinate their cases to provide consistent results, and strive to leave families in better condition than when they entered the system.

This bill does not appear to have a fiscal impact on state or local government. See "Fiscal Comments" below.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives. h1099d.JA.doc

STORAGE NAME:

3/30/2006

DATE:

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The unified family court system concept has the potential to avoid or at least reduce the number of conflicting orders relating to the same family and prevent multiple court appearances by the same family on the same issues. This may serve to reduce the number of hearings and therefore maximize judicial resources. However, given the broader view that a judge will have of a family and the judge's ability to order individuals to take certain actions, in a family court system government may have more involvement in a family's situation than otherwise.

B. EFFECT OF PROPOSED CHANGES:

Background

Currently, legal issues involving children and families are frequently addressed by different divisions of the court, particularly in larger judicial circuits. In many cases, the parties are appearing before a different judge in each proceeding. Therefore, it is possible that a judge may be unaware of previous or pending related legal matters involving the same children or family before the court. Unified family courts are intended to address this problem.

Florida's initiative for a unified family court reform began as a result of increasing demands being placed on the judicial system by the large volume of cases involving children and families. As the number of family court filings significantly increased, the Supreme Court noted that it must seek to improve productivity and conserve resources.¹ Against this background, the Court created the Family Court Steering Committee in 1994 to, among other things, advise the Court about the circuits' responses to families in litigation and make recommendations on the characteristics of a model family court.²

Last year, the Legislature implemented recommendations by the Florida Supreme Court related to the operation of a unified family court system.³ These recommendations were to:

- Allow the court system to create a unique identifier to identify all court cases related to the same family.
- Provide that specified orders entered in dependency court take precedence over court orders entered in other civil proceedings.
- Provide that final orders and evidence admitted in dependency actions are admissible in evidence in subsequent civil proceedings under certain circumstances.

Effect of Proposed Changes

The bill provides additional purposes and legislative intent regarding the implementation of a unified family court program in the circuit courts. These additional purposes are added to chapter 39, F.S., pertaining to proceedings relating to children; chapter 61, F.S., pertaining to dissolution of marriage, support, and custody; chapter 63, F.S., pertaining to adoption; section 68.07, F.S., pertaining to name change; chapter 88, F.S., pertaining to the Uniform Interstate Family Support Act; chapter 741, F.S., pertaining to marriage and domestic violence; chapter 742, F.S., pertaining to determination of

³ Chapter 2005-239, L.O.F.

STORAGE NAME: h1099d.JA.doc DATE: 3/30/2006

¹ See *In Re Report of the Family Court Steering Committee, 794 So.2d 518 (Fla. 2001).* The court, at p.520, reports that as of 1998 and 1999, family law cases constituted the largest percentage of all circuit court filings – over 40%. The court also reported that for this same period, these cases overwhelmingly represented the largest percentage of circuit court cases that were reopened - almost 70%.

² See In Re Report of the Commission on Family Courts, 633 So.2d 14 (Fla. 1994).

parentage; chapter 743, F.S., pertaining to disability of nonage of minors removed; chapter 984, F.S., pertaining to children and families in need of services; chapter 985, F.S., pertaining to the juvenile justice system; and part II of chapter 1003, F.S., pertaining to school attendance. The additional purposes and legislative intent include:

- To provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families, while at the same time resolving family disputes in a fair, timely, efficient, and cost-effective manner.
- That the courts embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system.
- To support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach.
- To focus on the needs of children who are involved in the litigation, refer families to resources that will make their relationships stronger, coordinate their cases to provide consistent results. and strive to leave families in better condition than when they entered the system.

C. SECTION DIRECTORY:

Section 1. Amends s. 39.001, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to proceedings relating to children.

Section 2. Amends s. 61.001, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to dissolution of marriage, support, and custody.

Section 3. Amends s. 63.022, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to adoption.

Section 4. Amends s. 68.07, F.S., relating to the purposes and legislative intent of the section in Florida Statutes pertaining to name change.

Section 5. Creates s. 88.1041, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to the Uniform Interstate Family Support Act.

Section 6. Amends s. 741.2902, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to marriage and domestic violence.

Section 7. Creates s. 742.016, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to determination of parentage.

Section 8. Creates s. 743.001, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to disability of nonage of minors removed.

Section 9. Amends s. 984.01, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to children and families in need of services.

Section 10. Amends s. 985.02, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to the juvenile justice system.

Section 11. Creates s. 1003.20, F.S., relating to the purposes and legislative intent of the part in Florida Statutes pertaining to school attendance.

Section 12. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

- B. FISCAL IMPACT ON LOCAL GOVERNMENTS:
 - 1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "D. Fiscal Comments" below.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Though the provisions of the bill are non-substantive, placing identical language in multiple places in Florida Statutes may make it difficult in the future to maintain consistency should these provisions ever need to be rewritten.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its March 15, 2006, meeting, the Judiciary Committee approved a strike-all amendment which differs from the bill as filed by rewording the Legislative Intent language and placing it in eleven separate statutes relating

STORAGE NAME: DATE:

h1099d.JA.doc 3/30/2006 to court proceedings involving children and families. The bill as filed placed the language in only three separate statutes. The eleven statutes are located in the following areas:

- Chapter 39 Proceedings Relating to Children
- Chapter 61 Dissolution of Marriage
- Chapter 63 Adoption
- Section 68.07 Name Change
- Chapter 88 Uniform Interstate Family Support Act
- Chapter 741 Marriage; Domestic Violence
- Chapter 742 Determination of Parentage
- Chapter 743 Disability of Nonage of Minors Removed
- Chapter 984 Children and Families in Need of Services
- Chapter 985 Delinquency; Interstate Compact on Juveniles
- Chapter 1003 Part II School Attendance

HB 1099

2006 **CS**

CHAMBER ACTION

The Judiciary Committee recommends the following:

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Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to court actions involving families; amending ss. 39.001, 61.001, 63.022, 68.07, 741.2902, 984.01, and 985.02, F.S., and creating ss. 88.1041, 742.016, 743.001, and 1003.20, F.S.; providing additional purposes relating to implementing a unified family court program in the circuit courts; providing legislative intent; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

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Section 1. Paragraph (n) is added to subsection (1) of section 39.001, Florida Statutes, to read:

creening.-(1) PURPOSES OF CHAPTER.--The purposes of this chapter

21 are:

(n) To provide all children and families with a fully integrated, comprehensive approach to handling all cases that

Page 1 of 11

24	involve children and families and a resolution of family
25	disputes in a fair, timely, efficient, and cost-effective
26	manner. It is the intent of the Legislature that the courts of
27	this state embrace methods of resolving disputes that do not
28	cause additional emotional harm to the children and families who
29	are required to interact with the judicial system. It is the
30	intent of the Legislature to support the development of a
31	unified family court and to support the state courts system's
32	efforts to improve the resolution of disputes involving children
33	and families through a fully integrated, comprehensive approach
34	that includes coordinated case management; the concept of "one
35	family, one judge"; collaboration with the community for
36	referral to needed services; and methods of alternative dispute
37	resolution. The Legislature supports the goal that the legal
38	system should focus on the needs of children who are involved in
39	the litigation, refer families to resources that will make
40	families' relationships stronger, coordinate families' cases to
41	provide consistent results, and strive to leave families in
42	better condition than when the families entered the system.
43	Section 2. Paragraph (d) is added to subsection (2) of
44	section 61.001, Florida Statutes, to read:
45	61.001 Purpose of chapter
46	(2) Its purposes are:
47	(d) To provide all children and families with a fully
48	integrated, comprehensive approach to handling all cases that
49	involve children and families and a resolution of family
50	disputes in a fair, timely, efficient, and cost-effective
51	manner. It is the intent of the Legislature that the courts of Page 2 of 11

CODING: Words $\mbox{\it stricken}$ are deletions; words $\mbox{\it underlined}$ are additions.

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this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system should focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system. Section 3. Subsection (6) is added to section 63.022,

Florida Statutes, to read:

63.022 Legislative intent.--

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It is the intent of the Legislature to provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to

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support the development of a unified family court and to support
the state courts system's efforts to improve the resolution of
disputes involving children and families through a fully
integrated, comprehensive approach that includes coordinated
case management; the concept of "one family, one judge";
collaboration with the community for referral to needed
services; and methods of alternative dispute resolution. The
Legislature supports the goal that the legal system should focus
on the needs of children who are involved in the litigation,
refer families to resources that will make families'
relationships stronger, coordinate families' cases to provide
consistent results, and strive to leave families in better
condition than when the families entered the system.

Section 4. Subsection (9) is added to section 68.07,
Florida Statutes, to read:

68.07 Change of name.--

children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully Page 4 of 11

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integrated, comprehensive approach that includes coordinated 108 case management; the concept of "one family, one judge"; 109 collaboration with the community for referral to needed 110 services; and methods of alternative dispute resolution. The 111 Legislature supports the goal that the legal system should focus 112 on the needs of children who are involved in the litigation, 113 refer families to resources that will make families' 114 relationships stronger, coordinate families' cases to provide 115 consistent results, and strive to leave families in better 116 condition than when the families entered the system. 117 Section 5. Section 88.1041, Florida Statutes, is created 118 119 to read: 88.1041 Legislative intent. -- It is the intent of the 120 Legislature to provide all children and families with a fully 121 integrated, comprehensive approach to handling all cases that 122 involve children and families and a resolution of family 123 disputes in a fair, timely, efficient, and cost-effective 124 manner. It is the intent of the Legislature that the courts of 125 this state embrace methods of resolving disputes that do not 126 cause additional emotional harm to the children and families who 127 are required to interact with the judicial system. It is the 128 intent of the Legislature to support the development of a 129 unified family court and to support the state courts system's 130 efforts to improve the resolution of disputes involving children 131 and families through a fully integrated, comprehensive approach 132 that includes coordinated case management; the concept of "one 133 family, one judge"; collaboration with the community for 134 referral to needed services; and methods of alternative dispute 135 l

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resolution. The Legislature supports the goal that the legal system should focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system. Section 6. Subsection (3) is added to section 741.2902, Florida Statutes, to read: 741.2902 Domestic violence; legislative intent with respect to judiciary's role. --(3) It is the intent of the Legislature to provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system should focus

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on the needs of children who are involved in the litigation,

refer families to resources that will make families' 164 relationships stronger, coordinate families' cases to provide 165 consistent results, and strive to leave families in better 166 condition than when the families entered the system. 167 Section 7. Section 742.016, Florida Statutes, is created 168 169 to read: 742.016 Legislative intent. -- It is the intent of the 170 Legislature to provide all children and families with a fully 171 integrated, comprehensive approach to handling all cases that 172 involve children and families and a resolution of family 173 disputes in a fair, timely, efficient, and cost-effective 174 manner. It is the intent of the Legislature that the courts of 175 this state embrace methods of resolving disputes that do not 176 cause additional emotional harm to the children and families who 177 are required to interact with the judicial system. It is the 178 intent of the Legislature to support the development of a 179 unified family court and to support the state courts system's 180 efforts to improve the resolution of disputes involving children 181 and families through a fully integrated, comprehensive approach 182 that includes coordinated case management; the concept of "one 183 family, one judge"; collaboration with the community for 184 referral to needed services; and methods of alternative dispute 185 resolution. The Legislature supports the goal that the legal 186 system should focus on the needs of children who are involved in 187 the litigation, refer families to resources that will make 188 families' relationships stronger, coordinate families' cases to 189 provide consistent results, and strive to leave families in 190 better condition than when the families entered the system. 191

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192 Section 8. Section 743.001, Florida Statutes, is created 193 to read: 743.001 Legislative intent.--It is the intent of the 194 Legislature to provide all children and families with a fully 195 integrated, comprehensive approach to handling all cases that 196 involve children and families and a resolution of family 197 disputes in a fair, timely, efficient, and cost-effective 198 manner. It is the intent of the Legislature that the courts of 199 this state embrace methods of resolving disputes that do not 200 cause additional emotional harm to the children and families who 201 are required to interact with the judicial system. It is the 202 intent of the Legislature to support the development of a 203 unified family court and to support the state courts system's 204 efforts to improve the resolution of disputes involving children 205 and families through a fully integrated, comprehensive approach 206 that includes coordinated case management; the concept of "one 207 family, one judge"; collaboration with the community for 208 referral to needed services; and methods of alternative dispute 209 resolution. The Legislature supports the goal that the legal 210 system should focus on the needs of children who are involved in 211 the litigation, refer families to resources that will make 212 families' relationships stronger, coordinate families' cases to 213 provide consistent results, and strive to leave families in 214 better condition than when the families entered the system. 215 Section 9. Paragraph (g) is added to subsection (1) of 216 section 984.01, Florida Statutes, to read: 217 218 984.01 Purposes and intent; personnel standards and screening. --219

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(1)	The	purposes	of	this	chapter	are:
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(g) To provide all children and families with a fully
integrated, comprehensive approach to handling all cases that
involve children and families and a resolution of family
disputes in a fair, timely, efficient, and cost-effective
manner. It is the intent of the Legislature that the courts of
this state embrace methods of resolving disputes that do not
cause additional emotional harm to the children and families who
are required to interact with the judicial system. It is the
intent of the Legislature to support the development of a
unified family court and to support the state courts system's
efforts to improve the resolution of disputes involving children
and families through a fully integrated, comprehensive approach
that includes coordinated case management; the concept of "one
family, one judge"; collaboration with the community for
referral to needed services; and methods of alternative dispute
resolution. The Legislature supports the goal that the legal
system should focus on the needs of children who are involved in
the litigation, refer families to resources that will make
families' relationships stronger, coordinate families' cases to
provide consistent results, and strive to leave families in
better condition than when the families entered the system.
Section 10. Paragraph (j) is added to subsection (1) of
section 985.02, Florida Statutes, to read:
985.02 Legislative intent for the juvenile justice
system

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(1) GENERAL PROTECTIONS FOR CHILDREN.--It is a purpose of the Legislature that the children of this state be provided with the following protections:

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(j) A fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system should focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system. Section 11. Section 1003.20, Florida Statutes, is created to read: 1003.20 Legislative intent. -- It is the intent of the Legislature to provide all children and families with a fully

integrated, comprehensive approach to handling all cases that

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involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system should focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system. Section 12. This act shall take effect July 1, 2006.

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